

**UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
Charlotte Division**

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In re:	:	Case No. 10-31607
	:	
GARLOCK SEALING	:	Chapter 11
TECHNOLOGIES LLC, <i>et al.</i> ,	:	
	:	Jointly Administered
Debtors. ¹	:	
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APPENDIX II

**POST-HEARING BRIEF OF THE OFFICIAL COMMITTEE OF ASBESTOS
PERSONAL INJURY CLAIMANTS FOR ESTIMATION OF
PENDING AND FUTURE MESOTHELIOMA CLAIMS**

GARLOCK'S "DESIGNATED CASES"

[FILED UNDER SEAL]

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¹ The Debtors are Garlock Sealing Technologies LLC (“**Garlock**”), Garrison Litigation Management Group, Ltd., and The Anchor Packing Company.

TABLE OF CONTENTS

	<u>Page(s)</u>
“Garlock’s Designated Cases”	1
Waters & Kraus Claimants	2
Robert Treggett	2
Tommie Williams	10
Reginald Taylor	14
Michael Steckler	17
Simon Greenstone Panatier Bartlett Claimants.....	21
Charles White.....	21
Robert Reed	26
Howard Ornstein.....	29
Belluck & Fox Claimants.....	34
Robert Flynn	34
Peter Homa.....	38
Raymond Beltrami	46
Williams Kherkher Claimants.....	49
Oscar Torres	49
John Phillips.....	55
The Shein Law Center Claimants	59
Bernard Massinger	59
John Brennan	62
Vincent Golini.....	64

APPENDIX

GARLOCK'S "DESIGNATED CASES"

Garlock has placed into evidence a memorandum prepared by its counsel, Robinson Bradshaw & Hinson (the "**RBH Memo**") that purports to summarize the evidence related to fifteen designated cases (the "**Designated Cases**") Garlock has selected from among the more than 10,000 mesothelioma claims it resolved in the tort system in the 2000s.² The Committee objects to the introduction of the RBH Memo as evidence on the ground, *inter alia*, that it is rife with inaccuracies, as shown below, and is not admissible as a summary of evidence under Federal Rule of Evidence 1006.³ Rather, the RBH Memo is nothing more than an advocacy piece, and this Appendix responds to it as such.

Garlock claims that the records in the Designated Cases demonstrate that plaintiffs systematically suppressed evidence of disclosure in the tort system. As shown below, the evidence shows no such thing. Moreover, the Designated Cases are not a random sample, and cannot be taken as representative of anything.⁴

Professor Brickman and Dr. Bates, as well as Garlock's other witnesses, relied on an earlier version of the RBH Memo without question in forming their opinions in this case; Professor Brickman even read from the memorandum during his testimony in the Estimation Hearing.⁵ Their conclusion that the claimants in the Designated Cases did not disclose exposures to non-Garlock asbestos-containing products during their tort cases rests heavily on the assumptions that filing a claim against a section 524(g) bankruptcy trust, casting a ballot in an asbestos bankruptcy, and filing a Rule 2019 statement identifying an asbestos victim all constitute admissions that the claimant was exposed to asbestos emitted from the bankrupt's product, and evidence that the bankrupt is liable for the claimant's injuries. Those assumptions are false, as demonstrated in the Committee's Post-Hearing Brief.⁶

In preparing the RBH Memo, Garlock's counsel drew on cherry-picked documents from an incomplete record, and ignored evidence that disproves Garlock's theory. Inevitably, Garlock's characterizations of the facts of the Designated Cases are one-sided, tendentious, and incomplete — and demonstrably inaccurate. Indeed, it is not possible in the context of this Estimation Hearing to accurately recreate the entire history of these long-resolved complex

² See GST-8011 (Debtors' Summary of Evidence Regarding Certain RFA List 1.a Cases). The RBH Memo is an "updated" version of a memorandum provided by Robinson, Bradshaw & Hinson on April 24, 2013 to Professor Brickman. See *id.* at 1-2. This Appendix adopts the naming conventions used for the asbestos bankruptcy trusts in the RBH Memo.

³ See ACC Post-Hearing Br. at 30-31, n.123.

⁴ See ACC Post-Hearing Br. at Part I.C(1)(b)(iv).

⁵ Hr'g Tr. 1249:4-8 (Brickman).

⁶ See ACC Post-Hearing Br. at Part I.C(1)(b)(iii).

cases. Nor would it be appropriate for this Court to revisit their merits. But a review of the available, albeit incomplete, records of these cases demonstrates that Garlock's story — that plaintiffs suppressed evidence of exposures to other products, and that Garlock would have settled the cases for less had it known of those exposures — is nothing more than revisionist history, and is unsupported by the evidence.

Waters & Kraus Claimants

Robert Treggett

Mr. Treggett, a living mesothelioma victim, was a machinist's mate in the Navy. He was stationed on the USS Marshall, a nuclear submarine, and was exposed to asbestos on the ship and in various shipyards, including Newport News Shipbuilding and Drydock. He also was exposed to asbestos while working for the Southern Pacific Railroad, and while doing home remodeling projects. Mr. Treggett and his wife sued Garlock and numerous other defendants in Los Angeles County Court.

By the end of trial, only three defendants remained: Garlock, Yarway Corp., and Kelly-Moore Paint Company. According to Garlock's internal major project expense approval memorandum approving a settlement after the trial ("MEA"), having Kelly-Moore as a co-defendant was highly problematic for Garlock. The MEA acknowledged that Kelly-Moore, "also a low dose defendant that made chrysotile products, concedes to juries, contrary to Garlock's position, that chrysotile can cause mesothelioma, and states further that to suggest otherwise is suggestive of fraud." In the Treggett case, Garlock admitted, "Kelly-Moore's position severely undermined one of [Garlock's] chief defenses, *i.e.*, the chrysotile defense."⁷

The Treggett trial was held in September 2004, and resulted in the largest verdict Garlock ever suffered. The jury awarded Mr. Treggett and his wife \$18,688,496 in compensatory damages, allocating 40% of the fault to Garlock, 14% to Kelley-Moore, and the remaining 46% to non-parties, including 39% to the U.S. Navy.⁸ In addition, the jury awarded the Treggetts \$15 million in punitive damages against Garlock.⁹ Garlock appealed, and then, in August 2006, while the appeal was pending, Garlock settled the case for \$9,000,000, which was approximately Garlock's share of the compensatory damages award, with interest.¹⁰

As shown at the Estimation Hearing,¹¹ Mr. Treggett disclosed extensive exposures to asbestos-containing products, including insulation. He stated that he worked on compressors, pumps and turbines in the Navy, and that:

⁷ ACC-341 (MEA/Williams).

⁸ See GST-5452 (Treggett Judgment) at GST-EST-0494812.

⁹ See *id.* at GST-EST-0494813.

¹⁰ See ACC-339 (MEA/Treggett).

¹¹ Hr'g Tr. 3177:12-3386:9, Aug. 6, 2013 (Magee).

[his] exposure to asbestos as a result of his frequent work on these products arose *as a result of breathing in respirable asbestos fibers on a repeat and continuing basis from insulation* and/or other asbestos-containing products installed, disturbed, and/or removed through his work and the work of other tradesmen working in his immediate vicinity.¹²

Mr. Treggett's interrogatory responses listed numerous manufacturers and products, including Garlock gaskets, Worthington pumps, and Flexitallic gaskets.¹³ Mr. Treggett also stated that when he worked on gaskets, he was "*often required to remove, apply, cut or disturb asbestos-containing blankets, including Asbeston*" and was exposed to dust.¹⁴ In addition, he described exposures from joint compound.¹⁵

In his case report,¹⁶ Mr. Treggett stated that:

the casing of the Yarway steam traps located on *steam lines* aboard the USS JOHN MARSHALL were *often insulated and/or blanketed with asbestos containing products*, and *plaintiff was repeatedly exposed to and inhaled asbestos dust as a result of removing and/or disturbing this insulation* either through his own work and/or through the work of other engine room personnel working in his immediate vicinity. Plaintiff was also exposed to asbestos as a result of the removal of asbestos containing gasketing material on the steam traps in the manner described above. While on board the USS John Marshall, all of Plaintiff's work took place in extremely cramped quarters with no ventilation, so that he was continually breathing in the asbestos-containing dust created by his own activities and the activities of others working around him.¹⁷

Mr. Treggett described extensive exposures to insulation and other asbestos products in his deposition as well.¹⁸ For, example, when asked what types of asbestos-containing products

¹² GST-5494 (Interrogatory Responses) at WATERS 06342 (emphasis added).

¹³ *See id.* at WATERS 06340.

¹⁴ *Id.* at WATERS 06342 (emphasis added).

¹⁵ *See id.* at WATERS 06343.

¹⁶ Pursuant to a General Order governing all asbestos cases in the Superior Court of the State of California for the County of Los Angeles, all claimants must file a Case Report that discloses, *inter alia*, all exposure information and witnesses that will testify regarding product identification. *See* Third Amended General Order No. 29, *In re Los Angeles Asbestos Litig. – General Orders*, Case No. C 700000 (Cal. Sup. Ct. May 27, 2009).

¹⁷ GST-5609 at WATERS 11398 (emphasis added).

¹⁸ GST-5498 (Treggett Dep. Vol. I) at 31:16-32:12, 34:24-35:25, 36:17-37:10. GST-5499 (Treggett Dep. Vol. III) at 533:7-12. GST-5501 (Treggett Dep. Vol. V) at 745:10-15, 746:15-24.

he worked with or around, he testified: “Everything, but to be specific, pumps, valves, steam traps, the turbine generators, *the piping and anything around it.*”¹⁹ He repeatedly described his work conditions when he used these products as dusty and dirty.²⁰

Mr. Treggett also testified to extensive exposures to insulation during his trial:²¹ he testified about four foot long pipe lagged with insulation in between flange runs and the blankets that were wrapped around flanges.²² He testified that “there [were] miles of pipe and miles and miles of wire.”²³ He also testified that he breathed the dust from pipe insulation that was torn off or removed in his presence,²⁴ and that he breathed dust when mud was mixed or blankets were removed in his presence, which created a “big cloud of dust.”²⁵

Garlock now contends that Mr. Treggett “generally minimized his insulation exposure” at the trial by claiming that he spent only three percent of his time removing insulation from flanges.²⁶ As shown at the Estimation Hearing, this position is diametrically opposed to the position Garlock took during its appeal in the Treggett case.²⁷ In its brief on appeal, Garlock acknowledged and, indeed, emphasized that Mr. Treggett had admitted to “massive” exposures to insulation, relying on some of the same testimony that Garlock now cites as evidence that he “minimized” his exposures:

Mr. Treggett testified that he had massive exposure to insulation or “lagging” on the Marshall. He said insulation was placed on the “miles” of pipes on the Marshall, and that he was present when it was removed and replaced. . . . He inhaled asbestos fibers from the lagging every day he was on the ship during the six month overhaul. . . . The dust from the lagging covered his clothes and hair. . . . Mr. Treggett was not only in the presence of other workers while they removed the lagging, but he removed lagging himself during three percent of his work.²⁸

¹⁹ GST-5498 (Treggett Dep. Vol. I) at 32:7-9 (emphasis added).

²⁰ *Id.* at 36:17-37:10. *See also* GST-5499 (Treggett Dep. Vol. III) at 533:7-12; GST-5501 (Treggett Dep. Vol. V) at 745:10-15, 746:15-24.

²¹ GST-5443 (Treggett Trial Tr.) at 731:18-733:23, 1035:22-1036:2; GST-5444 (Treggett Trial Tr.) at 1213:15-25, 1219:2-26, 1226:8-20, 1227:7-22, 1232:7-1233:17, 1248:16-20.

²² GST-5443 (Treggett Trial Tr.) at 731:8-13; GST-5444 (Treggett Trial Tr.) at 1213:15-25.

²³ GST-5443 (Treggett Trial Tr.) at 1035:27-1036:1.

²⁴ GST-5444 (Treggett Trial Tr.) at 1226:8-20.

²⁵ *Id.* at 1227:7-22.

²⁶ GST-8011 at 3.

²⁷ Hr’g Tr. 3317:7-3319:9, Aug. 6, 2013 (Magee).

²⁸ ACC-795 (Garlock Appeal Brief, Treggett) at 26.

Garlock also argued on appeal that Mr. Treggett had testified to massive exposures to asbestos blankets used as insulation on the USS Marshall:

Mr. Treggett said he removed asbestos blankets ninety percent of the time he performed repairs on board the Marshall. . . . He said he removed the blankets almost daily and that it created a “big cloud of dust.” . . . In other words, *nearly every time Mr. Treggett was exposed to a Garlock gasket, he was also exposed to a cloud of dust from an asbestos blanket.* Mr. Treggett himself identified those blankets as “Asbeston” blankets.²⁹

Ironically, when confronted with Garlock’s position in the Treggett appeal, Mr. Magee tried to minimize the significance of Garlock’s contention at that time that Mr. Treggett had testified to massive exposure to insulation, arguing that “the procedural context is important.”³⁰

At the Treggett trial, Mr. Treggett testified that he had heard about Unibestos during his training, but could not identify it as having been on board the USS Marshall.³¹ As Garlock noted in its appeal, Mr. Treggett’s own expert testified that Unibestos probably was present on the ship.³² Garlock’s expert also testified that amosite insulation likely was on the ship, though he conceded that he did not know what brand it was.³³ Notably, although Garlock’s expert stated that Navy specifications could be used to determine the brand of insulation,³⁴ and Garlock had obtained such specifications in other cases, Garlock did not obtain ship records or introduce them

²⁹ *Id.* at 28 (emphasis in original).

³⁰ Hr’g Tr. 3318:18-3319:9, Aug. 6, 2013 (Magee):

“Q. And the procedural posture matters; right?

A. The procedural context is important particularly when you're talking about an argument to the appellate court based on parts of a record.

Q. And the same record that you're suggesting to the judge here displays the plaintiff minimizing his exposures you presented to the California Supreme Court through your counsel in this brief as depicting massive exposures through testimony right out of the mouth of the plaintiff. Right?

A. Those are your words.

Q. No, no. ‘Massive exposure’ is right there.

A. They were presented to demonstrate that there should have been — I lost the name — that Unibestos should have been on the verdict form. That's what the purpose of this was. That was the error that was intended to be conveyed.”

³¹ See GST-5444 (Treggett Trial Tr.) at 1237:14-1238:5.

³² See ACC-795 (Garlock Appeal Brief, Treggett) at 26, 29.

³³ See GST-5450 (Treggett Trial Tr. (Sawyer)) at 3381:5-23.

³⁴ See *id.* at 3381:15-20.

at trial in the Treggett case. Garlock sought to place Pittsburgh Corning, which is responsible for Unibestos, on the verdict form, but the trial judge agreed with Mr. Treggett's attorney, Mr. Eddins, that the evidence in the record was not enough to prove that Unibestos was on the ship. Thus, Garlock failed to satisfy its burden of proof in seeking an allocation of liability to the bankrupt Pittsburgh Corning.

Garlock's suggestion that Mr. Eddins somehow acted improperly by holding Garlock to that burden is absurd. It was Mr. Eddins' obligation as a zealous advocate to exclude from the verdict sheet any entity for which Garlock did not have evidence sufficient to meet the legal standard applicable at trial. For its part, Garlock held Mr. Treggett firmly to his burden of proof, challenging his identification of Garlock gaskets, although Garlock was well aware that Garlock gaskets were widely used by the Navy.³⁵ Garlock even challenged whether Garlock gaskets contained asbestos, even though Garlock's own expert admitted that they did.³⁶

At the Estimation Hearing, Garlock argued that a master ballot cast by Waters & Kraus in the Pittsburgh Corning bankruptcy before the Treggett trial on behalf of Mr. Treggett and hundreds of other asbestos victims amounted to an admission by Mr. Treggett of exposure to Unibestos.³⁷ This is incorrect as a matter of fact and law; as shown in the Committee's Post-Hearing Brief, bankruptcy ballots are not admissions of exposure, and there is no evidence that a ballot has ever been admitted as evidence of exposure in any tort suit.³⁸ The ballot, which was signed by an attorney, was based on a reasonable belief that the asbestos victims had potential claims against the bankrupt. Garlock cannot now deny that Waters & Kraus had reason to believe Mr. Treggett might have a claim against Pittsburgh Corning — in the California court, Garlock itself was arguing that it had enough evidence to go to the jury on the question of whether Unibestos caused his mesothelioma.

Garlock complains that the Pittsburgh Corning ballot was not disclosed in the tort suit, and contends that, if it had been disclosed, Mr. Eddins could not have been able to argue at closing that Garlock had not proven Unibestos was on the ship.³⁹ But Garlock does not, and cannot, claim that Mr. Treggett or his attorneys were required to disclose the ballot; ballots were not requested in discovery. Moreover, even if Garlock had obtained the ballot, it has not shown that the ballot would have been admissible at trial. More important for present purposes, Garlock does not contend that even today it has any proof that Unibestos was in fact on board the USS Marshall, let alone that Mr. Treggett or his attorneys had any such proof during the tort suit but failed to disclose it to Garlock.

³⁵ See Hr'g Tr. 3320:3-20, Aug. 6, 2013 (Magee); See GST-5444 (Treggett Trial Tr.) at 1212:6-20.

³⁶ See GST-5450 (Treggett Trial Tr. (Sawyer)) at 3360:18-21.

³⁷ See Hr'g Tr. 2268:7-2269:11, July 31, 2013 (Turlik). See also GST-8011 at 4-5.

³⁸ See ACC Post-Hearing Br. at Part I.C(1)(b)(iii).

³⁹ See GST-8011 at 4-5; Hr'g Tr. 3077:16-3078:7, Aug. 5, 2013 (Magee).

Garlock also complains that no other bankrupt companies appeared on the Treggett verdict form, even though California law permits allocation of fault to bankrupt companies. But the reason that Flexitallic, a bankrupt, was not on the verdict sheet had nothing to do with lack of disclosure. Mr. Treggett testified repeatedly at trial that he was exposed to and breathed in dust from Flexitallic gaskets, and his own expert testified that Flexitallic gaskets contributed to Mr. Treggett's mesothelioma.⁴⁰ Flexitallic was not on the verdict sheet because the trial judge ruled that Garlock failed to establish the corporate identity of that manufacturer.⁴¹ Garlock also failed to establish the corporate identity of the solvent company that manufactured Asbeston blankets, which Mr. Treggett's own expert, Dr. John Templin, testified were the asbestos-containing products with which Mr. Treggett came into contact the most often.⁴² Garlock has only its own failures of proof, or tactical choices, to blame for missing the chance to put the makers of Flexitallic gaskets or Asbeston blankets on the verdict sheet to reduce its own share of the fault as determined by the jury.

It bears emphasis that, despite its missteps at trial, Garlock did manage to get the Navy, which enjoys sovereign immunity, onto the verdict sheet, on the ground that it was responsible for the asbestos on its ships. In essence, the Navy, which the jury found responsible for 39% of Mr. Treggett's injuries, was a proxy for the manufacturers of the amosite insulation that Garlock pointed to as the true culprit in the Treggett case. There is no reason to suppose that the jury's saddling Garlock with an even greater share of responsibility for Mr. Treggett's injuries than it allocated to the Navy resulted from anything other than the strength of the evidence against it.

Garlock complains that Waters & Kraus filed sixteen trust claims on Mr. Treggett's behalf after the case was settled, fourteen of which, Garlock contends, were based on "exposures not identified in discovery." (Garlock admits that Mr. Treggett testified to his exposures to Worthington pumps and Flexitallic gaskets, for which the DII (Halliburton) and Federal Mogul (Flexitallic) trusts are responsible.)⁴³ Each of the fourteen trust claims cited Mr. Treggett's work for the Navy at various sites, including on the USS Marshall, and at the Newport News Shipbuilding and Drydock (also referred to as the Newport News Naval Shipyard)⁴⁴ where the Marshall was drydocked, and were accompanied by discovery materials provided to Garlock in the tort suit, such as Mr. Treggett's deposition and work history sheets.⁴⁵ At trial, Garlock's

⁴⁰ See ACC-795 (Garlock Appeal Brief, Treggett) at 28.

⁴¹ See GST-5438 (Treggett Trial Tr.) at 5407:12-22.

⁴² See ACC-795 (Garlock Appeal Brief, Treggett) at 28; GST-5446 (Treggett Trial Tr.) at 1930:18-23.

⁴³ GST-8011 at 5, 7.

⁴⁴ See ACC-770 (Garlock MEA) (noting that Newport News Shipbuilding and Drydock is "a/k/a Newport News Naval Shipyard").

⁴⁵ See GST-5478 (Treggett ABB Lummus Trust Claim); GST-5479 (Treggett ACandS Trust Claim); GST-5480 (Treggett AWI Trust Claim); GST-5481 (Treggett B&W Trust Claim); GST-5482 (Treggett C.E. Thurston Trust Claim); GST-5483 (Treggett Combustion Engineering Trust Claim); GST-5484 (Treggett Eagle-Picher Trust Claim); GST-5485 (Treggett Owens Corning
(Footnote continued on next page.)

expert, Mr. Brickman, agreed that there was no new evidence of exposure in the trust claims that had not been served on the defendants in the tort suit.⁴⁶

Garlock contends that six of the trust claims are “based on” Mr. Treggett’s work at the Mare Island shipyard. Five of those claims, however, also cite to Mr. Treggett’s work at the Newport News Shipbuilding and Drydock (also referred to as Newport News Naval Shipyard), and/or on the USS Marshall, and each is accompanied by discovery materials from the tort suit.⁴⁷ Garlock asserts that Mr. Treggett “claimed during the tort case he was in a classroom and never went on board a ship” at Mare Island.⁴⁸ Mr. Treggett’s sworn testimony does not tend to prove Garlock’s contention that he actually was exposed at Mare Island and did not disclose it to Garlock. In any event, Mr. Treggett also testified at trial that the school at Mare Island was in the middle of an active shipyard where a nuclear submarine was being built and work on other vessels was taking place.⁴⁹

On some of the claim forms, there are boxes to check to indicate the nature of the work done at the worksite, and there are checks in the boxes that indicate Mr. Treggett “altered, repaired or otherwise worked” with asbestos-containing products, as well as being in “close proximity to workers” who were working with such products. Garlock quibbles that these checkmarks are inconsistent with Mr. Treggett’s testimony that he was in a classroom at Mare Island.⁵⁰ But the claim forms were not signed by Mr. Treggett personally; they were submitted on his behalf by his attorney. The most plausible explanation is not that Mr. Treggett lied during the tort suit, as Garlock would have this Court conclude but, rather, that the paralegal filling out those forms in the law office was simply mistaken in checking the box indicating that Mr. Treggett worked with asbestos-containing materials at that site. In any event, as noted above, the claims in which such checkmarks appear rested not only on Mr. Treggett’s presence at Mare Island, but are also supported by his work at other sites. The Western Asbestos Trust Claim, which is the only claim that rests solely on Mr. Treggett’s work at Mare Island, does not have

(Footnote continued from previous page.)

Fibreboard Trust Claim); GST-5486 (Treggett Federal Mogul Trust Claim); GST-5487 (Treggett DII (HAL) Trust Claim); GST-5488 (Treggett Keene Trust Claim); GST-5489 (Treggett Owens Corning Trust Claim); GST-5490 (Treggett Porter Hayden Trust Claim); GST-5491 (Treggett Raytech Trust Claim); GST-5492 (Treggett USG Trust Claim); GST-5493 (Treggett Western Trust Claim). The claim to the ACandS Trust (which did not become effective until July 2008) was also supported by a third party affidavit demonstrating the presence of ACandS’ products at the site.

⁴⁶ See Hr’g Tr. 1315:7-1317:10, July 26, 2013 (Brickman).

⁴⁷ See GST-5478 (Treggett ABB Lummus Trust Claim); GST-5480 (Treggett AWI Trust Claim); GST-5483 (Treggett Combustion Engineering Trust Claim); GST-5485 (Treggett Owens Corning Fibreboard Trust Claim); GST-5489 (Treggett Owens Corning Trust Claim).

⁴⁸ GST-8011 at 5.

⁴⁹ GST-5444 (Treggett Trial Tr.) at 1239:4-1240:15.

⁵⁰ GST-8011 at 5.

those checked boxes.⁵¹ More important for present purposes, none of the claims contain any supporting documentation that was not disclosed in the tort case.

Garlock claims that Peter Kraus, of Waters & Kraus, testified that it is “his firm’s practice to delay filing Trust claims until after the conclusion of tort litigation in order to avoid bankrupt entities being placed on the verdict form and allocated fault in several or proportional liability jurisdictions,” such as California, where the Treggett case was tried.⁵² But at least nine of the Trusts against whom Waters & Kraus filed claims on Mr. Treggett’s behalf were not even effective until after the Treggett trial.⁵³ Moreover, Garlock mischaracterizes Mr. Kraus’s testimony. Mr. Kraus did not testify that his firm has a practice of delaying trust claims. He testified that trusts will often settle claims without specific evidence of exposure to their predecessors’ products; that it is sufficient that the plaintiff worked at a given site where the trust knows its predecessor’s asbestos-containing product was used.⁵⁴ In the tort system, such evidence would typically not be sufficient to withstand summary judgment, and would not be enough for a defendant to get an entity on the verdict form in order to lay off liability.⁵⁵ When asked under what circumstances his firm would delay filing trust claims, Mr. Kraus testified that, in a several liability jurisdiction (as distinct from one following the traditional doctrine of joint and several liability among co-tortfeasors), he might consider delaying a site-based trust claim, provided there was no legal requirement that the claim be filed before trial.⁵⁶

In California, where Treggett was tried, there is no requirement that trust claims be filed before trial, as David Glaspy admitted at the Estimation Hearing.⁵⁷ And in his opening statement at the Estimation Hearing, Garlock’s counsel stated: “We’re not complaining about delaying the trust claim. What the plaintiff is obligated to do is disclose the product exposures that support

⁵¹ See GST-5493 (Treggett Western Trust Claim).

⁵² GST-8011 at 6, citing Kraus Dep. 41:13-42:24, Jan. 14, 2013.

⁵³ See GST-138 (RAND Report) at 26-27, Table 4.1 (noting effective dates of trusts: ABB Lummus – 2006; AC&S – 2008; Armstrong World Industries – 2006; Babcock & Wilcox – 2006; C.E. Thurston & Sons – 2006; Combustion Engineering – 2006; Owens Corning Fibreboard – 2006; Owens Corning – 2006; Porter Hayden – 2006).

⁵⁴ Kraus Dep. 48:14-25, Jan. 14, 2013.

⁵⁵ *Id.* at 54:12-21, 169:7-17.

⁵⁶ *Id.* at 41:13-42:24.

⁵⁷ See Hr’g Tr. 4590:1-10, Aug. 22, 2013 (Glaspy). This comports with the traditional idea that the plaintiff is master of his case. See *Wagner v. Bondex Int’l, Inc.*, 368 S.W.3d 340, 359 (Mo. Ct. App. W.D. 2012) (“Plaintiffs had the right to sue and seek settlement from the tortfeasors of their choosing. It follows, then, that the trial court cannot delay entry of judgment and force Plaintiffs to seek settlement agreements with bankruptcy trusts of asbestos manufacturers in order to reduce the judgment against Bondex.”).

the trust claim.”⁵⁸ The decision whether to pursue solvent defendants before filing trust claims is one that an attorney for a mesothelioma victim must make in the best interests of the client.⁵⁹

Tommie Williams

Mr. Williams was a 60-year-old living mesothelioma victim who was exposed to asbestos while working for more than two decades in various shipyards as a boilermaker, shipfitter, chipper, caulker, die finisher, and pneumatic tool operator. He also had asbestos exposures while remodeling his home, and was exposed to brake dust while working as a car detailer.⁶⁰ Garlock settled the claim against it for \$475,000 in January 2005, on the heels of the verdict and settlement in the Treggett case. Mr. Williams’ case was about to go to trial in Los Angeles County court, and the parties were in the process of selecting the jury.⁶¹

Garlock’s internal MEA discloses that Garlock was concerned that it was facing another enormous jury verdict like that in the Treggett case, with few co-defendants remaining to share in the verdict.⁶² The MEA notes that Mr. Williams was “the same age and had almost the identical exposure to Garlock products as Treggett did.”⁶³ In addition, the MEA noted, Mr. Williams was represented by the same firm that represented the Treggetts, and the jury pool in the Williams case was “far worse” for Garlock than that in the Treggett case.⁶⁴ A major impetus to settle the case was that Kelly-Moore was among the remaining defendants which, according to the MEA, was “a particularly negative factor” because

Kelly-Moore . . . is also a low dose defendant that made chrysotile products, [and] concedes to juries, contrary to Garlock’s position, that chrysotile can cause mesothelioma, and states further that to contend otherwise is suggestive of fraud.

⁵⁸ Hr’g Tr. 73:1-4, July 22, 2013 (Cassada).

⁵⁹ Only this year did Ohio and Oklahoma enact statutes permitting defendants to postpone asbestos trials pending the plaintiffs’ filing of trust claims. OHIO REV. CODE § 2307.951 (2013); S.B. 404, Enrolled Senate (Okla. 2013). Although case management orders in some jurisdictions purport to do so, their validity is questionable and in any event they are the exception, not the rule. *See* Hr’g Tr. 4590:1-10, Aug. 22, 2013 (Glaspy) (admitting that no such requirement exists in California); Hr’g Tr. 2333:25-2334:10, Aug. 1, 2013 (Turlik) (admitting that there is no universally recognized obligation for claimants to submit trust claims before trying their tort claims).

⁶⁰ *See* GST-6002 (Williams Case Report) at GST-EST-0164912-15; GST-6004 (Williams Interrogatory Responses) at GST-EST-0165040-46 & (Work History Sheet) GST-EST-0165061-69.

⁶¹ ACC-6387 (Letter from Mark Iola to Melissa Ferrell, dated Jan. 20, 2005).

⁶² *See* ACC-341 (MEA/Williams).

⁶³ *Id.*

⁶⁴ *Id.*

As it did in Treggett, Kelly-Moore's position severely undermined one of [Garlock's] chief defenses, *i.e.*, the chrysotile defense, in Williams."⁶⁵

The MEA concludes that "[t]his is a favorable settlement given the Garlock exposure in this case, the number of co-defendants remaining at trial, the fact that Kelly-Moore remained in the case, and the especially bad jury pool here."⁶⁶

In addition to the strong proof of exposure to Garlock products, discovery in the Williams case included evidence of extensive exposure to other asbestos-containing products, including insulation. Mr. Williams' Interrogatory Responses, for example, stated that while working at the Long Beach Naval Shipyard, the Bethlehem Steel Shipyard, and the Todd Naval Shipyard, he was exposed to boilers, pumps, turbines, gaskets, decking and insulating cement, "all of which contained asbestos-containing components and/or were *insulated with products containing asbestos*."⁶⁷ He stated that he "*was required to remove and/or disturb asbestos-containing insulation on and/or around the turbines, valves and pumps. The insulation was cut off with a knife by hand, which process created a lot of dust, which Plaintiff inhaled*."⁶⁸ He also stated that he was "exposed to dust from these products through the work of others working in his immediate vicinity."⁶⁹ In addition, he described being exposed to and inhaling asbestos-containing dust from decking material.⁷⁰ His interrogatory responses listed by name numerous Navy and commercial ships on which he had worked and been exposed to asbestos.⁷¹ He stated as well that he was exposed to asbestos from arc grinders and brakes while working as a car detailer and polisher, and from drywall and plaster/joint compound while remodeling his home.⁷²

⁶⁵ *Id.* See also Hr'g Tr. 3332:5-7, Aug. 6, 2013 (Magee) ("Q. In any event, Kelly-Moore took the position, and that didn't help Garlock at all in the case. A. Absolutely not. You're absolutely correct.").

⁶⁶ ACC-341 (MEA/Williams).

⁶⁷ GST-6003 (Amended Interrogatory Responses) at GST-EST-0164975 (emphasis added).

⁶⁸ *Id.* at GST-EST-0164976 (emphasis added).

⁶⁹ *Id.* at GST-EST-0164977.

⁷⁰ *Id.* at GST-EST-0164975-76.

⁷¹ The ships listed in Mr. Williams' interrogatory responses included: Ashtabula, England CG22, Decatur DDG 31, John Paul Jones DDG 32, Henry B Wilson DDG 7, Tower DDG 9, Hoel DDG 13, Buchanan, Waddell DDG 12, Missouri BB63, New Jersey BB62, Jouett CG 29, Horne CG 30, Fox CG33, Leahey CG 16, Gridley CG 21, Halsey CG 23, Foster DD 964, David R. Ray DD 972, Sterett CG 31, Coral Sea CV 43, Ranger CV 61, Duluth LPD 6, Ogden LPD 5, Tarawa LHA 1, Belleauwood LHA2, Pelileu LHA 5, Kindaid DD 965, Oldendorf DD 972, Merrill DD 976, Fletcher DD 992, John Young DD 973, Constellation C60, USS Pigeon, as well as ships from the Matson Line and Sealand ships. See *id.* at GST-EST-0164977-78.

⁷² See *id.* at GST-EST-0164973-80.

Mr. Williams also described extensive exposures to insulation and other asbestos-containing products in his deposition. He testified, for example, that on board the USS Ashtabula, he worked near insulators who were mixing and applying asbestos-containing “mud” and creating dust;⁷³ and that he chipped away insulation, which created dust.⁷⁴ He testified that when he performed maintenance work on valves, he would have to cut off insulation on pipes to get to the flanges,⁷⁵ and that he personally removed and disturbed pipe insulation.⁷⁶ He also testified that he cut insulation from ship holds with a knife,⁷⁷ and that he carried insulation bricks from inside boilers.⁷⁸

Garlock has little to say about the Williams case, and did not even raise it during the Estimation Hearing. But Garlock has protested in the RBH Memo that Mr. Williams filed trust claims, ballots, and Rule 2019 statements “based on” exposures that were “unidentified” in the tort case.⁷⁹ Garlock has admitted that exposures to products for which seven bankruptcy trusts are responsible were disclosed: Babcock & Wilcox, J.T. Thorpe, Manville, Owens Corning, Quigley, Thorpe Insulation, and United States Gypsum. Garlock has failed to acknowledge, however, that exposure to products for which the ASARCO trust is responsible were disclosed, despite the statement in Mr. Williams’ case report that Lac d’Amiante du Québec (also known as Lake Asbestos of Quebec, or “LAQ”) — a subsidiary of ASARCO⁸⁰ — supplied asbestos fibers in brake dust that he inhaled.⁸¹ Moreover, as noted in the discussion of the Phillips case, below, ASARCO supplied fiber to Garlock, and its successor trust accepts claims based on LAQ and Garlock exposure.⁸²

⁷³ See, e.g., GST-6012 (Williams Dep., July 30, 2004) at 493:2-13.

⁷⁴ See, e.g., *id.* at 495:6-25.

⁷⁵ See, e.g., GST-6013 (Williams Dep., Aug. 16, 2004) at 703:18-24.

⁷⁶ See, e.g., GST-6014 (Williams Dep., Sept. 1, 2004) at 1101:1-9.

⁷⁷ See, e.g., GST-6010 (Williams Dep., Aug. 17, 2004) at 776:12-777:03.

⁷⁸ See, e.g., *id.* at 825:19-827:23.

⁷⁹ GST-8011 at 47. It bears noting that at least 15 of the 23 trusts to whom Mr. Williams submitted claims did not become effective until after he settled his case against Garlock. See GST-0138 (Rand Report) at 26-27, Table 4.1 (noting effective dates of trusts: ABB Lummus – 2006; ACandS – 2008; Armstrong World Ind. – 2006; ARTRA- 2007; ASARCO – 2009; Babcock & Wilcox – 2006; Burns and Roe – 2009; Combustion Engineering – 2006; DII (Halliburton) – 2005; Kaiser – 2006; Owens Corning Fibreboard – 2006; J.T. Thorpe Settlement Trust – 2006; Owens Corning – 2006; United States Gypsum – 2006).

⁸⁰ ACC-458 (Order Approving Joint Disclosure Statement, *In re Asarco LLC*, Case No. 05-21207 (Bankr. S.D. Tex. Jul. 2, 2009) at 1, n.1.

⁸¹ See GST-6002 (Williams Case Report) at GST-EST-0164912, GST-EST-0163926.

⁸² LAQ Claims Valuation Framework Schedule A, ASARCO Trust, *available at* http://www.asarcotrust.com/Files/20120822_ASARCO_LAQ_ScheduleA.pdf (last visited Oct. 23, 2013). See also Chandler Dep. at 82:18-83:8, Apr. 24, 2013.

Garlock contends that, because Waters & Kraus filed Rule 2019 statements and/or master ballots in five bankruptcies on behalf of Mr. Williams and hundreds of other clients before the Williams settlement, “Waters & Kraus knew about the exposures and failed to disclose them to Garlock while his case was being litigated.”⁸³ But, as the Committee has shown in its Post-Hearing Brief, Rule 2019 statements and ballots do not require evidence of exposure,⁸⁴ and do not demonstrate that Waters & Kraus at that time had evidence of Mr. Williams’ asbestos exposures beyond what was produced to Garlock in discovery. Furthermore, Mr. Williams subsequently asserted a claim against the trust formed in only one of those bankruptcies, the Kaiser Trust (which became effective in 2006, after the settlement).⁸⁵ There is no evidence Mr. Williams has submitted any claim to the Federal-Mogul, GIT, or Narco trusts, and the Pittsburgh Corning trust does not yet exist.

Garlock’s contention that sixteen of Mr. Williams’ trust claims were based on exposures not disclosed in the tort suit⁸⁶ is contrary to the evidence. Each of Mr. Williams’ trust claims was based on his work at a site or sites disclosed on his work history sheet in the tort suit, including Long Beach Naval Shipyard, Bethlehem Naval Shipyard, Todd Naval Shipyard, and Douglas Aircraft, and almost all were supported either by the work history sheet and/or deposition Mr. Williams provided Garlock in the tort suit, or were based merely on Mr. Williams’ presence at the relevant site, with no independent exposure evidence for the claimant.⁸⁷

⁸³ GST-8011 at 47.

⁸⁴ See ACC Post-Hearing Br. at Part I.C(1)(b)(iii).

⁸⁵ See *id.* at 48. See also GST-0138 (Rand Report) at 26, Table 4.1 (effective date of Kaiser Trust – 2006).

⁸⁶ See GST-8011 at 48.

⁸⁷ See GST-6044 (Williams ABB Lummus Trust Claim); GST-6045 (Williams ACandS Trust Claim); GST-6046 (Williams AWI Trust Claim); GST-6064 (Williams ARTRA Trust Claim); GST-6047 (Williams ASARCO Trust Claim); GST-6049 (Williams Burns and Roe Trust Claim); GST-6050 (Williams Celotex Trust Claim); GST-6054 (Williams DII (HAL) Trust Claim); GST-6052 (Williams Eagle-Picher Trust Claim); GST-6061 (Williams NGC Claim); GST-6053 (Williams Owens Corning Fibreboard Trust Claim); GST-6056 (Williams H.K. Porter Trust Claim); GST-6059 (Williams Keene Trust Claim); GST-6063 (Williams Raytech Trust Claim).

The DII (Harbison-Walker) Trust Claim is also supported by some bates-stamped documents related to Foster-Wheeler, which was a named defendant in the Williams case; it appears the materials were produced by Foster Wheeler during discovery. See GST-6055 (Williams DII (Harbison-Walker) Trust Claim).

The Combustion Engineering Trust Claim is supported by Mr. Williams’ Interrogatory Responses, Work History Sheet and Social Security Records, as well as discovery responses in an unrelated case showing that Combustion Engineering products, as well as Garlock products, were present at the worksite. The identification of Garlock products indicates that Garlock was
(Footnote continued on next page.)

Reginald Taylor

Mr. Taylor was a 58-year old living mesothelioma victim who sued Garlock and numerous other defendants, including unknown tortfeasors DOES 1-300, in San Francisco County in February, 2005.⁸⁸ He was exposed to asbestos when he worked as a fireman and machinist's mate in the U.S. Navy from 1964 to 1970 at Hunter's Point Naval Shipyard, Long Beach Naval Shipyard and on board the USS Hornet.⁸⁹

In June, 2006, after the Treggett verdict and settlement, Garlock entered into a three-year settlement agreement with Waters & Kraus.⁹⁰ Garlock agreed to pay Waters & Kraus up to \$7 million each year to resolve that firm's trial-set cases against Garlock and/or Coltec and/or their related entities, including Fairbank Morse Pump and Fairbank Morse Engine, with an average \$300,000 to be paid to each mesothelioma victim.⁹¹ The deal did not compel individual settlements; trial remained an option if the parties could not agree in a particular case.⁹² The agreement provided that settlement negotiations for each case would begin "[o]nce it has been established that there is valid Garlock and related entity id (from plaintiff, coworkers, or other reliable sources of product identification)," and stated that the parties would exchange "medical and product exposure information."⁹³ Nothing in the deal required a representation from the plaintiff regarding exposures to other manufacturers' products.

(Footnote continued from previous page.)

involved in the case. See GST-6051 (Williams Combustion Engineering Trust Claim) at WATERS 03698. There is no indication that Waters & Kraus had connected that document to Mr. Williams before the settlement of his suit. In any event, the document simply places products at Mr. Williams' worksite; it does not place those products in Mr. Williams' breathing zone or rise to the level of evidence of actual exposure to those products under the standard required to prove liability or apportion fault in a tort suit.

⁸⁸ See ACC-6155 (Taylor Complaint).

⁸⁹ See *id.*; GST-4441 (Interrogatory Responses Set 1) at GST-EST-0179831, GST-EST-0179841-43.

⁹⁰ See ACC-228 (Letter from David Glaspy to Mark Iola, dated June 8, 2006).

⁹¹ *Id.* at GST-EST-0337684, GST-EST-0337686.

⁹² See Hr'g Tr. 3278:11-15, Aug. 6, 2013 (Magee) ("Q. And that was an arrangement under which if Garlock didn't like the price at which the case was being tendered within the structure of the deal, Garlock could opt out and decline to pay. A. Yeah, I believe that was the case.") See also Magee Dep. 316:23-25 Apr. 11, 2013 ("I believe that document allowed either side to except any cases from that agreement.").

⁹³ See ACC-228 (Letter from David Glaspy to Mark Iola, dated June 8, 2006) at GST-EST-0337686-87.

Mr. Taylor's case was settled June 15, 2006 pursuant to the three-year settlement deal, along with Waters & Kraus's other 2006 trial-listed cases.⁹⁴ Garlock's internal memorandum approving the deal notes that "[w]e feel this is a significant savings over what we would have anticipated the cases would have been over the next three years as well as the significant defense costs savings."⁹⁵ Mr. Taylor died from mesothelioma two and a half months later, on August 28, 2006.⁹⁶

Mr. Taylor specifically identified Garlock gaskets during discovery.⁹⁷ He also disclosed extensive exposures to other asbestos-containing products, including insulation, when he worked for the U.S. Navy. For example, in his responses to standard interrogatories, he stated that on the USS Hornet, among other things, he removed and replaced valve coverings, and repaired chipped and broken insulation.⁹⁸ He also stated that, while in the Navy, he worked around various asbestos-containing products and equipment, including pumps, valves, gaskets, packing, compressors, turbines, purifiers, draft blowers, diesel engines and distilling plants. Most of the equipment was insulated with block, mud, and blankets, and caused him to inhale dust.⁹⁹

Mr. Taylor testified at length about the considerable asbestos exposures he suffered from various sources while in the U.S. Navy serving as a fireman, machinist mate, and supply petty officer. As a supply petty officer, he ordered parts and equipment for the machine room.¹⁰⁰ As a fireman apprentice he did all of the "dirty work"¹⁰¹ in the machine room of the ship, an enclosed, small space kept very hot. All of the machinery and equipment in the machine room, including pumps, compressors, condensers, valves, pipes, turbines and gaskets,¹⁰² was insulated in a "white blanket" that contained asbestos.¹⁰³ He had to remove that blanket of insulation to work on the

⁹⁴ See ACC-659 (Letter from Mark Iola to David Glaspy, dated June 15, 2006) at GST-EST-0337689-90; ACC-338 (MEA/Taylor).

⁹⁵ ACC-338 (MEA/Taylor).

⁹⁶ See GST-4466 (Taylor B&W Trust Claim) at WATERS 01459.

⁹⁷ See, e.g., GST-4442 (Taylor Dep. Vol. I) at 53:23-54:1, 64:14-16, 75:13-23; GST-4444 (Taylor Dep. Vol. III) at 377:21-25, 393:21-406:25.

⁹⁸ See GST-4441 (Interrogatory Responses Set 1) at GST-EST-0179841-42 ("Plaintiff removed the valve covering by removing the wire holding it on, removed the pad or covering, repaired the valve, replaced the pad, repair chipped or broken insulation by mixing up loose asbestos material with water, filled in the area needing repair and covered the repair with asbestos cloth and insulation glue.").

⁹⁹ See GST-4440 (Interrogatory Responses Set 2) at GST-EST-0179816-17.

¹⁰⁰ GST-4442 at 27:7-19.

¹⁰¹ *Id.* at 30:17-18.

¹⁰² *Id.* at 36:23-37:1, 40:19-23, 41:1-9.

¹⁰³ *Id.* at 34:2-21.

equipment, and removal generated an enormous amount of dust in the small, enclosed space.¹⁰⁴ He regularly worked with pipes, both removing and replacing their surrounding insulation.¹⁰⁵ He also regularly used a wire brush and other metal items to scrape off flanges, sending dust “everywhere.”¹⁰⁶ He worked with Garlock gaskets and cut gaskets from Garlock materials; when he cut the Garlock materials, asbestos would be “flying in the air.”¹⁰⁷ He removed or replaced somewhere in the neighborhood of 70 gaskets from steam equipment over the course of his naval career.¹⁰⁸ He cleaned up after the turbines were repaired, removing insulation that had been ripped off the turbines, which was soft and “[r]eally dusty.”¹⁰⁹

Mr. Taylor recalled the manufacturers of many of the products he worked on, including Garlock. He testified regarding the manufacturers of the pumps on which he worked, explaining that he often used the service manuals the manufacturers provided for the pumps.¹¹⁰ He was able to list several of the manufacturers of the valves he worked on because the valves were stamped.¹¹¹

Garlock contends that seventeen trust claims filed on behalf of Mr. Taylor’s estate after his death were “based on unidentified exposures.”¹¹² But each of those claims cited to Mr. Taylor’s work in the Navy at the Hunter’s Point Naval Shipyard, Long Beach Naval Shipyard, or on the USS Hornet, all of which are worksites Mr. Taylor identified in discovery in the tort suit.¹¹³ Thirteen of those claims were accompanied solely by materials provided to Garlock in the tort suit by Mr. Taylor and his attorneys, such as Mr. Taylor’s work history sheet, naval records, and/or excerpts from his deposition. The other four were accompanied also by materials from other cases, such as work history sheets or deposition excerpts, connecting the trusts’

¹⁰⁴ *Id.* at 49:12-23, 61:1-25, 68:6-19, 87:12-25.

¹⁰⁵ GST-4443 (Taylor Dep. Vol. II) at 168:11-169:11.

¹⁰⁶ GST-4442 (Taylor Dep. Vol. I) at 51:19-24, 55:20-56:3, 62:1-18.

¹⁰⁷ *Id.* at 53:23-54:24, 91:18-92:8.

¹⁰⁸ *Id.* at 90:1-11.

¹⁰⁹ *Id.* at 95:3-96:16; GST-4444 (Taylor Dep. Vol. III) at 381:17-82:23.

¹¹⁰ GST-4442 (Taylor Dep. Vol. I) at 56:18-58:25.

¹¹¹ *Id.* at 83:3-9.

¹¹² GST-8011 at 53.

¹¹³ *See* GST-4463 (Taylor ACandS Trust Claim); GST-4465 (Taylor AWI Trust Claim); GST-4466 (Taylor B&W Trust Claim); GST-4467 (Taylor Celotex Trust Claim); GST-4468 (Taylor Combustion Engineering Trust Claim); GST-4473 (Taylor DII (Harbison Walker) Trust Claim); GST-4469 (Taylor Eagle-Picher Trust Claim); GST-4471 (Taylor Federal-Mogul (Flexitallic) Trust Claim); GST-4470 (Taylor Fibreboard Trust Claim); GST-4474 (Taylor H.K. Porter Trust Claim); GST-4476 (Taylor Keene Trust Claim); GST-4481 (Taylor Raytech Trust Claim); GST-4482 (Taylor Thorpe Insulation Trust Claim); GST-4484 (Taylor USG Trust Claim); GST-4485 (Taylor Western Trust Claim).

products to Mr. Taylor's worksites.¹¹⁴ There is no evidence in the record to suggest that Mr. Taylor or Waters & Kraus had made the connection between the worksites and the products before settling with Garlock.

Garlock also contends that because Waters & Kraus submitted four Rule 2019 statements on behalf of Mr. Taylor and hundreds of other clients before Garlock settled the Taylor case, Waters & Kraus must have known Mr. Taylor was exposed to those bankrupts' products and "failed to disclose them to Garlock while his case was being litigated."¹¹⁵ But, as demonstrated in the Committee's Post-Hearing Brief, Rule 2019 statements are not evidence of exposure.¹¹⁶

Michael Steckler

Garlock has found little to quibble about in Mr. Steckler's case, and did not even mention it at the Estimation Hearing. Mr. Steckler was a living mesothelioma victim who had worked as a pipefitter on numerous ships for seventeen years with the Navy at several shipyards and at Todd Shipyards in Seattle.¹¹⁷ On March 4, 2005, Mr. Steckler and his wife filed suit in San Francisco against Garlock and numerous other defendants, including EnPro and Coltec, as successors-in-interest to Fairbanks Morse Engine. The complaint also states that Mr. Steckler was unable to identify all of the asbestos products to which he was exposed, and names unknown tortfeasors DOES 1-300.¹¹⁸

Garlock settled Mr. Steckler's case for \$850,000 in December 2005, as part of a group deal under which Garlock paid a total of \$1,500,000 to settle four cases.¹¹⁹ Garlock's internal MEA states that the Steckler case was the "primary impetus" behind the deal, noting Mr. Steckler's age (at 59, he was young compared to many mesothelioma victims), and that he had testified to having worked both with Garlock gaskets and Fairbanks Morse engines.¹²⁰ As noted in the discussion of the Beltrami case, below, EnPro was eager to avoid any litigation of its liability as a successor for the Fairbanks Morse entities.

Although Garlock now claims that it could have settled the Steckler case for less if the plaintiff had disclosed exposures to bankrupts' products, Garlock admitted at the time that "a

¹¹⁴ See GST-4471 (Taylor Federal-Mogul Trust Claim); GST-4473 (Taylor DII (Harbison-Walker) Trust Claim); GST-4475 (Taylor Kaiser Trust Claim); GST-4482 (Taylor Thorpe Insulation Trust Claim).

¹¹⁵ GST-8011 at 53.

¹¹⁶ See Post-Hearing Br. at Part I.C(1)(b)(iii).

¹¹⁷ See ACC-337 (MEA/Steckler).

¹¹⁸ See ACC-6147 (Steckler Complaint) at GST-EST-0162191.

¹¹⁹ See ACC-337 (MEA/Steckler); ACC-659 (settlement correspondence) at GST-EST-0337671.

¹²⁰ See ACC-337 (MEA/Steckler). See also GST-4335 (Interrogatory Responses) at GST-EST-0513272 (describing working with Garlock gaskets, including cutting and scraping, and breathing dust), GST-EST-0513275.

number of other manufacturers' products were identified during discovery.”¹²¹ Garlock's MEA shows that Garlock concluded it was in its best interests to settle the case because it was the only remaining named defendant; Garlock was unwilling to risk trying to lay off liability on “empty chair” defendants. In the MEA, Garlock noted that the other defendants had been dismissed from the case on summary judgment, “[leaving] Garlock as the only viable trial defendant in a case with verdict potential, not including any punitive damages, in the \$5 to \$10 million range.”¹²² Garlock viewed this as an “enormous risk” it was unwilling to take, and considered the settlement “favorable”.¹²³

During discovery, Mr. Steckler disclosed extensive exposures to numerous asbestos-containing products, including insulation. In his interrogatory responses, for example, Mr. Steckler described his work in the Navy as a shipfitter and sheet metalsmith:

Plaintiff, and/or others in his vicinity inspected, repaired, aligned and tested various types of ships machinery, including pumps, valves, compressors, turbines, evaporators, purifiers, forced draft blowers, diesel engines, and distilling plants. Plaintiff worked on board during overhauls and repairs. His work required him to remove the aforementioned equipment and reinstall, when, among other things, that equipment was being tested. Most of the equipment was insulated with block, mud and blankets. *Plaintiff himself would usually remove the insulation from the equipment he worked on, and insulators would reinsulate the equipment afterwards. This work required the insulators to saw the block insulation, as well as mix dry mud with water for application. Plaintiff's work was primarily in compartments, including the engine rooms and the pump rooms. This work was very dusty and dirty, which dust Plaintiff inhaled.*¹²⁴

Mr. Steckler also described working on boilers, evaporators, pumps and turbines on specific ships.¹²⁵ He noted that his duties included “fabricating, installing and repairing air-duct work throughout the ship.”¹²⁶ In performing those duties, “[h]e crawled in the ceilings of the engine rooms and boiler rooms and in doing so he can recall *disturbing friable pipe covering*.”¹²⁷ Mr. Steckler also stated that he was exposed to asbestos products, including joint compound,

¹²¹ ACC-337 (MEA/Steckler).

¹²² *Id.*

¹²³ *Id.*

¹²⁴ GST-4335 (Interrogatory Responses) at GST-EST-0513271-72 (emphasis added).

¹²⁵ *See id.* at GST-EST-0513274-77.

¹²⁶ GST-4387 (Interrogatory Responses) at WATERS 07736.

¹²⁷ *Id.* (emphasis added).

while drywalling and remodeling his home.¹²⁸ He explained that he could not remember details about which products were at which sites, and reserved the right to supplement.¹²⁹

Mr. Steckler also disclosed extensive asbestos exposures during his deposition, including exposures to insulation, particularly on board ships. For example, he testified that, while he was not an insulator, he cut away insulation in order to install gaskets.¹³⁰ He testified that he worked on boilers and pipes covered with insulation, that he regularly removed asbestos blankets from around flanges, and that when he removed the blankets, the air was very dusty and he breathed in the dust.¹³¹ He testified repeatedly about such exposures: that he removed insulation from pumps, which was very dusty;¹³² that he was around workers while they disturbed asbestos insulation on a feed tank, which was very dusty;¹³³ that he saw workers removing insulation with hammers, which was very dusty;¹³⁴ and that he used Kaiser Gypsum mud and sanded it, which was also very dusty.¹³⁵

Garlock contends that the trust claims filed on behalf of Mr. Steckler after the case was settled were based on exposures not disclosed to Garlock.¹³⁶ But Mr. Steckler disclosed to Garlock the worksites where he worked, the jobs he performed, and the kinds of products to which he was exposed, including insulation. If Garlock wished to determine the brand names of those products, Garlock could have conducted its own investigation, such as by obtaining Navy specifications for the numerous ships on which he worked, many of which were listed in Mr. Steckler's complaint.¹³⁷ Indeed, Mr. Steckler's own exhibit list for trial indicates that he

¹²⁸ See GST-4335 (Interrogatory Responses) at GST-EST-0513277.

¹²⁹ See *id.* at GST-EST-0513272.

¹³⁰ See GST-4315 (Steckler Dep. May 5, 2005) at 46:1-7.

¹³¹ See *id.* at 48:15-49:4, 56:24-57:5, 125:3-9.

¹³² See *id.* at 82:13-83:6.

¹³³ See *id.* at 163:13-21.

¹³⁴ See GST-4381 (Steckler Dep. May 18, 2005) at 313:2-15.

¹³⁵ See GST-4315 at 183:4-25.

¹³⁶ See GST-8011 at 50.

¹³⁷ See ACC-6147 (Steckler Complaint) at GST-EST-0162212, Exhibit A (naming worksites and ships, including US Naval Training Center, San Diego, CA; USS DIXIE, Todd Shipyard, San Pedro, CA, USS ORISKANY, San Diego, CA Naval Shipyard, Hunter's Point Naval Shipyard; Todd Shipyard, Seattle WA, USS KNOX, USS GRAY, USS LOCKWOOD, USS DOWNES, USS ROARK, USS WHIPPLE, USS MARVIN SHIELD, SS PRESIDENT VAN BUREN, SS PRESIDENT MONROE, SS PRESIDENT POLK, SS PRESIDENT HARRISON, MV WALLA WALLA, MV SPOKANE, FAUSTINA, several FAUS tug boats and barges, and USS CAMDEN).

intended to introduce naval records to establish asbestos exposures; Garlock and its co-defendants were free to do the same.¹³⁸

Garlock's assumption that Rule 2019 statements filed by Waters & Kraus on behalf of hundreds of clients, including Mr. Steckler, show that Waters & Kraus was aware that Mr. Steckler was exposed to products for which those trusts are responsible,¹³⁹ is incorrect, as shown in the Committee's Post-Hearing Brief.¹⁴⁰ Mr. Kraus testified that Waters & Kraus and Mr. Steckler provided Garlock with all exposure evidence of which they were aware at the time; they did not know whether Mr. Steckler was exposed to those bankrupts' products, but filed the Rule 2019 statements on Mr. Steckler's behalf because of the potential that he was.¹⁴¹

After the settlement, Mr. Steckler filed claims with twenty trusts, at least twelve of which did not even exist at the time of the settlement.¹⁴² Garlock concedes that the exposures underlying the claims to the Babcock and Wilcox, DII Halliburton, and Federal Mogul Trusts were disclosed, but claims that the exposures underlying the other seventeen trust claims were not. But those seventeen trust claims were made on the basis of Mr. Steckler's having worked at sites that were disclosed in discovery, such as Hunter's Point, Todd Shipyard and the San Diego Naval Shipyard, and most are supported solely by materials provided to Garlock in the tort suit, such as Mr. Steckler's deposition and work history sheet.¹⁴³ Garlock cannot, and does not, contend that the information in those claims was not disclosed.

The Armstrong World Industries, Celotex, Owens Corning Fibreboard, and Owens Corning Trust claims each also have attached a work history sheet from another case, stating that those trust products, as well as Garlock products, were present at the worksite.¹⁴⁴ Given that

¹³⁸ See ACC-6154 (Steckler Ex. List) at WATERS 11384.

¹³⁹ See GST-8011 at 50.

¹⁴⁰ See ACC Post-Hearing Br. at Part I.C(1)(b)(iii).

¹⁴¹ See Kraus Dep. 78:6-25, Jan. 14, 2013.

¹⁴² See GST-8011 at 51 (listing trust claims); see also GST-0138 (RAND Report) at 26-27 (noting effective dates of trusts: ABB Lummus – 2006; ACandS – 2008; Armstrong World Ind. – 2006; ARTRA – 2007; Babcock & Wilcox – 2006; Combustion Engineering – 2006; Federal Mogul (Flexitallic) – 2007; Owens Corning Fibreboard – 2006; J.T. Thorpe – 2006; Kaiser Aluminum – 2006; Owens Corning – 2006; USG – 2006).

¹⁴³ See GST-4353 (Steckler ABB Lummus Trust Claim); GST-4354 (Steckler ACandS Trust Claim); GST-4370 (Steckler ARTRA Trust Claim); GST-4358 (Steckler Combustion Engineering Trust Claim); GST-4360 (Steckler Bartells Trust Claim); GST-4359 (Steckler Eagle-Picher Trust Claim); GST-4365 (Steckler J.T. Thorpe Trust Claim); GST-4366 (Steckler Kaiser Trust Claim); GST-4367 (Steckler Keene Trust Claim); GST-4369 (Steckler Raytech Trust Claim); GST-4371 (Steckler Thorpe Insulation Trust Claim); GST-4372 (Steckler USG Trust Claim).

¹⁴⁴ See GST-4357 (Steckler Celotex Trust Claim) at WATERS 00853-58; GST-4355 (Steckler AWI Trust Claim) at WATERS 00790-800; GST-4361 (Steckler Owens Corning Fibreboard (*Footnote continued on next page.*)

Garlock products are also identified, it appears that Garlock was involved in those cases. In any event, the work history sheets simply place the products at the worksite; they do not demonstrate exposure to asbestos fibers under the standard applicable in the tort system.

In addition to materials from Mr. Steckler's tort suit, the DII (Harbison Walker) Claim, which was asserted in January 2007, is supported by an excerpt from a deposition in an unrelated case placing Harbison Walker products at Todd Shipyard.¹⁴⁵ The third-party deposition does not place dust emitted from the Harbison Walker products within Mr. Steckler's breathing zone, and does not evidence his exposure to those products. In any event, there is no evidence that Mr. Steckler's counsel made any connection between Mr. Steckler and the third-party deposition before Mr. Steckler's claim was settled.

Simon Greenstone Panatier Bartlett Claimants

Charles White

Mr. White's case was referred by Early, Lucarelli, Sweeney & Meisenkothen, LLC (the "**Early firm**") to Simon Greenstone Panatier Bartlett PC (then known as Simon, Eddins & Greenstone ("**Simon Eddins**"), whom Garlock considered among "the best trial lawyers in the country."¹⁴⁶ Mr. White, a living mesothelioma victim, filed suit against Garlock and numerous other defendants, including several pump manufacturers, in May 2006.¹⁴⁷ The suit was filed in Texas state court, but that court ruled, over strong opposition from Garlock, that Virginia substantive law would apply.¹⁴⁸ After some additional motions practice, Garlock moved for summary judgment on the ground that a settlement with one joint tortfeasor released all tortfeasors. Garlock then settled with Mr. White for \$250,000 in March 2007, as part of a group settlement of all of Simon Eddins' cases set for trial in 2008.¹⁴⁹ The Court subsequently denied a similar summary judgment motion by several of Garlock's co-defendants.¹⁵⁰

(Footnote continued from previous page.)

Trust Claim) at WATERS 00937-43; GST-4368 (Steckler Owens Corning Trust Claim) at WATERS 01194-200.

¹⁴⁵ See GST-4364 (Steckler DII (Harbison Walker) Trust Claim) at WATERS 01037-01044.

¹⁴⁶ ACC-334 (MEA/Reed).

¹⁴⁷ See ACC-6330 (White Petition and Jury Demand, dated May, 2006). See also ACC-6329 (Fourth Amended Petition and Jury Demand, dated Feb. 28, 2007).

¹⁴⁸ See ACC-6371 (Plaintiff's Motion to Apply Virginia Law); ACC-6368 (Plaintiff's Response to Garlock's Motion for Summary Judgment, dated Mar. 5, 2007) at SIMON 16191, n.1 (noting court ruling that Virginia law would apply).

¹⁴⁹ See ACC-340 (MEA/White). See also ACC-6368 (Plaintiff's Response to Garlock's Motion for Summary Judgment, dated Mar. 6, 2007).

¹⁵⁰ See ACC-6372 (Pretrial Order, dated Mar. 27, 2007) (denying summary judgment motion on same ground by other defendants).

During the 1960s, Mr. White worked for several years at Norfolk Shipbuilding and Drydock. He testified that it was a private shipyard that was often referred to as the Norfolk Navy Shipyard, which was a different operation at a different site, and that people often confused the one with the other.¹⁵¹ Mr. White worked in a machine shop at the shipyard, where he repaired ship equipment, including pumps and valves, and he identified Garlock gaskets as one of the numerous asbestos-containing products to which he was exposed.¹⁵²

Garlock suggests that Mr. White denied exposure to insulation products, stating that Mr. White testified that when he worked in the shipyard machine shop, “he was brought equipment from which he removed gaskets,” and that “he never went aboard ships or saw asbestos insulation being installed or removed.”¹⁵³ At trial, Mr. Magee asserted that Mr. White had said “that they worked in a shop and the equipment was brought to them with the asbestos insulation cleaned off.”¹⁵⁴ This was a gross mischaracterization of the case.

While Mr. White testified that he worked in a machine shop, he never denied that he was exposed to insulation products. Rather, Mr. White alleged exposure to asbestos insulation products in his complaint. Furthermore, Mr. White charged the named defendants with responsibility for those insulation products, to which workers were exposed when using the defendants’ equipment and products, on the theory that they had a duty to warn about those third-party products.¹⁵⁵ The court denied a motion by Buffalo Pumps, one of Garlock’s codefendants, for a ruling that there is no duty to warn of third-party products under Virginia law.¹⁵⁶ Thus, Garlock was at risk of liability not only for the asbestos in its own products, but also for the failure to warn of the hazards workers encountered when removing third-party insulation products in order to remove and install gaskets. As Mr. Magee acknowledged at trial, “there’s no question, absolutely no question” that a jury charge that Garlock was liable for hazards presented by removal of third party products “made these dangerous cases with real risks at trial.”¹⁵⁷

¹⁵¹ See GST-5612 (White Dep. Aug. 11, 2006) at 21:8-22:16.

¹⁵² See *id.* at 43:4-13, 53:14-54:7.

¹⁵³ GST-8011 at 28.

¹⁵⁴ Hr’g Tr. 3135:8-9, Aug. 5, 2013 (Magee).

¹⁵⁵ See ACC-6329 (Fourth Amended Petition and Jury Demand, dated Feb. 28, 2007) at GST-EST-0228422-29.

¹⁵⁶ See ACC-6375 (Order Denying Defendant Buffalo Pumps’ Motion for Partial Summary Judgment, dated Mar. 14, 2007). *Cf. Spruill v Boyle-Midway, Inc.*, 308 F.2d 79, 83-85 (4th Cir. 1962) (holding that the seller of a product “must also be expected to anticipate the environment which is normal for the use of his product” and “must anticipate the reasonably foreseeable risks of the use of his product in such an environment. These are risks which are inherent in the proper use for which his product is manufactured.”).

¹⁵⁷ Hr’g Tr. 3251:18-20, Aug. 6, 2013 (Magee). See also, *id.* at 3253:6-9 (“And absolutely, if Garlock can be responsible for that thermal insulation exposure, Garlock faces significant trial risks.”).

Mr. White disclosed massive exposures to asbestos insulation in discovery, in both his interrogatory responses, as well as in the very passages from Mr. White's deposition that Garlock cites. Not surprisingly, Mr. White did not know the specific names of the insulation products or their manufacturers.¹⁵⁸ But he testified repeatedly throughout his deposition that he was exposed to asbestos insulation every day for years in the machine shop when he cut open and removed the insulation from pumps, valves and winches and swept up the debris, and that the insulation created dust that he breathed.¹⁵⁹ Indeed, in a filing with the Texas court seeking to compel production of trust claims (which did not exist at the time), Garlock stated that it believed claims may have been filed because "Mr. White has identified exposure to insulation products that may have been manufactured by bankrupt companies."¹⁶⁰ No trust claims had been filed at that time, however, as Mr. White's attorneys were focusing on the tort case, which was on fast-track status because Mr. White had been diagnosed with mesothelioma, a disease for which the median survival from the time of diagnosis ranges from seven to fifteen months.¹⁶¹ Mr. White also disclosed in discovery that he had been exposed to asbestos-containing products during home renovations.¹⁶²

Mr. White's trust claims were filed by the Early firm and another firm after Simon Eddins settled the tort claim against Garlock. Garlock states that twenty-two of the trust claims were based on exposures that had not been "identified" in discovery.¹⁶³ But the majority of the trust claims rely on Mr. White's work in the machine shop at Norfolk Shipbuilding and Drydock, which was disclosed in the tort suit, and present no independent evidence of exposure to specific

¹⁵⁸ GST-5612 at 308:18-309:18.

¹⁵⁹ See, e.g., *id.* at 24:6-25:25, 26:1-21, 31:3-33:23, 34:4-35:12, 35:14-39:23 (testifying that asbestos was floating in the air after he scraped it off), 40:1-41:24, 43:4-44:19 (stating that after scraping off asbestos, "[a]sbestos is airborne. Once it's . . . as dry as it is, it's flying all over the place. And its dusty."), 45:2-19 (removing gaskets from valves with an air brush "made a dusty mess"; asbestos was "flying all over the place."), 47:5-49:8 (stating again that removing asbestos made a "dusty mess"), 51:10-25, 53:3-25, 147:6-149:4, 157:14-158:5, 200:1-201:8. See also ACC-6340 (White Aff. Mar. 3, 2007).

¹⁶⁰ ACC-6356 (Garlock Motion to Compel, dated Jan. 29, 2007) at SIMON 10607.

¹⁶¹ See ACC-6366 (Plaintiff's Notice of Intention to Elect Fast Track Status, dated Sept. 7, 2006) at SIMON 16143.

¹⁶² GST-5624 (White's Supplemental Discovery Responses, Aug. 6, 2006) at GST-EST-0181696 ("In approximately 1967, Mr. White performed remodeling and repair work on his home. Some of his duties on this job were to cut, install and paint asbestos siding, install and remove asbestos floor tiles and repeatedly mix, sand and sweep joint compound. Mr. White often observed visible dust from his work with and around these products and he often breathed the dust created from these processes."); see also GST-5612 at 60:5-62:1 (testifying regarding exposures during home renovations).

¹⁶³ GST-8011 at 28.

products.¹⁶⁴ (The claim forms for several trusts mistakenly state that Mr. White’s worksite was the Norfolk Navy Yard.¹⁶⁵ That is obviously a clerical error; the accompanying affidavits and/or work history sheets and/or social security records state that he worked at Norfolk Shipbuilding and Drydock, which, as Mr. White testified, is often confused with the Norfolk Navy Shipyard.) Two of the trust claims are based on exposures Mr. White suffered when renovating his home, a source of exposure that was disclosed to Garlock during discovery.¹⁶⁶

Garlock assumes — and invites the Court to conclude — that Mr. White must have known during the tort suit the specific products to which he had been exposed. But there is no evidence to support that conclusion. To the contrary, Mr. Simon, of the Simon Eddins firm, testified that all of the exposure evidence known to his firm and client at that time was disclosed during the tort suit.¹⁶⁷ Mr. Simon also testified that after settling with solvent defendants, his firm would continue to investigate against other entities, and sometimes discovered additional exposure evidence to support trust claims: “sometimes the case will get resolved and we will get more information and on that basis we can, in good faith, submit a trust claim.”¹⁶⁸ When a case was settled, Mr. Simon noted, there was no obligation to supplement discovery, because “[t]here is no remaining tort case to supplement.”¹⁶⁹

If it wished to do so before settling, Garlock’s counsel could have investigated what ships were in drydock during the period when Mr. White worked at the shipyard, and used ship records to determine what kinds of insulation products were used to insulate the equipment on those ships. Garlock’s counsel could have conducted further investigation into the products to which Mr. White was exposed during home renovations as well.¹⁷⁰ Instead, Garlock’s counsel evidently made the strategic decision that Garlock had enough information to verify that settlement of the claim at the agreed price was in Garlock’s best interest without pressing for more facts.

Garlock notes that four of the trust claims submitted on Mr. White’s behalf by the Early firm were supported by affidavits executed by Mr. White in which he identifies specific products

¹⁶⁴ See, e.g., GST-5977 (White ABB Lummus Trust Claim); GST-5980 (White AWI Trust Claim); GST-6000 (White C.E. Thurston Trust Claim); GST-5993 (White Celotex Trust Claim); GST-5995 (White Eagle-Picher Trust Claim); GST-5996 (White Manville Trust Claim); GST-5986 (White H.K. Porter Trust Claim) (stating exposure site unknown); GST-5997 (White Keene Trust Claim); GST-5992 (White Raytech Trust Claim).

¹⁶⁵ See GST-5984 (White Federal-Mogul (Flexitallic) Trust Claim); GST-5985 (White GAF Trust Claim); GST-5983 (White Owens Corning Fibreboard Trust Claim); GST-5999 (White Owens Corning Trust Claim); GST-5987 (White Porter Hayden Trust Claim).

¹⁶⁶ See GST-5978 (White ARTRA Trust Claim); GST-5998 (White NGC Trust Claim).

¹⁶⁷ See Simon Dep. 72:4-15, 79, Jan. 4, 2012.

¹⁶⁸ Simon Dep. 177:22-179:01, Jan. 4, 2013; Hr’g Tr. 4631:7-4632:5, Aug. 22, 2013 (Glaspy).

¹⁶⁹ Simon Dep. 177:22-179:01, Jan. 4, 2013; Hr’g Tr. 4631:7-4632:5, Aug. 22, 2013 (Glaspy).

¹⁷⁰ See Simon Dep. 117:19-23, Jan. 4, 2012.

of the bankrupt companies, implying that Mr. White must have lied during the tort suit.¹⁷¹ But each of these affidavits was executed after the settlement. In this estimation proceeding, Garlock did not depose any person with knowledge of the circumstances under which those affidavits were prepared. In this proceeding, then, the affidavits are merely hearsay and prove nothing. The Court cannot rule out that Mr. White's recollection may have been refreshed with respect to these products by additional information found after Garlock exited the case.

Garlock complains that Mr. White's claims to the Babcock & Wilcox and Bartells trusts were accompanied by affidavits by Mr. White stating that, as a fire control/radar officer on Coast Guard ships, he was exposed to asbestos products while working in the vicinity of insulators, repairmen, and other tradesmen.¹⁷² Garlock contends that these affidavits "directly contradict[]" Mr. White's "deposition testimony that he was not exposed to asbestos while in the Coast Guard."¹⁷³ But Mr. White did not deny exposure to asbestos during his time on board Coast Guard ships. Rather, he stated that he did not *believe* he was exposed. When asked if there were insulated pipes on board the ships where he slept and ate, he responded, "Good grief. I don't want to guess."¹⁷⁴ This testimony is far from the flat denial of exposure that Garlock takes it for; rather, it is merely a denial of knowledge at the time Mr. White was being deposed. Garlock has no evidence that his testimony was incomplete when given.

Finally, Garlock notes that claims to the Western Asbestos and Thorpe trusts, filed by the Mandelbrodt firm after his death, were supported by affidavits by Mr. White's widow, Barbara Lorton, in which she states that Mr. White was exposed while working on two ships at the Norfolk Naval Shipyard.¹⁷⁵ Garlock did not depose Ms. Lorton or anyone with knowledge of the affidavits, and they are mere hearsay in the context of this estimation proceeding. Yet Garlock treats them as evidence of exposures that were not disclosed in the tort suit, and takes the position that Mr. White must have committed perjury in the tort suit.¹⁷⁶ But Mr. Simon testified that no such exposures were disclosed because they had not occurred.¹⁷⁷ As evidenced by the social security records accompanying each of those trust claims, Mr. White worked at Norfolk Shipbuilding and Drydock, not the Norfolk Naval Shipyard.¹⁷⁸ Evidently, his widow was

¹⁷¹ See GST-8011 at 28, n.7 (citing GST-5980 (White AWI Trust Claim); GST-5989 (White USG Trust Claim); GST-5998 (White NGC Trust Claim); GST-5988 (White THAN Trust Claim)).

¹⁷² See GST-8011 at 29 (citing GST-5981 (White B&W Trust Claim) at SIMON 27505 and GST-5994 (White Bartells Trust Claim) at SIMON 27977).

¹⁷³ *Id.* at 28.

¹⁷⁴ GST-5612 (White Dep. Aug. 11, 2006) at 168:13-15.

¹⁷⁵ See GST-8011 at 29.

¹⁷⁶ See *id.* at 30.

¹⁷⁷ See Simon Dep. 104:20-105:17, Jan. 4, 2012.

¹⁷⁸ See GST-5990 (White Thorpe Trust Claim) at SIMON 27824; GST-5991 (White Western Trust Claim) at SIMON 27925.

misinformed. Moreover, there is no evidence that the Western Asbestos or Thorpe trust claims have been accepted by those trusts.

Robert Reed

Mr. Reed was exposed to asbestos while he was an electrician and motor pool technician in the U.S. Army, as an electrician at Moore Dry Dock, and as a bystander while working at West Coast Meats. Mr. Reed sued Garlock and numerous other defendants, including unknown entities DOES 1-450, in Los Angeles County on October 18, 2006.¹⁷⁹ The action was prosecuted by Mr. Reed's wife and son after his death in April, 2007.¹⁸⁰

Garlock settled Mr. Reed's claim as part of a group settlement of Simon Eddins' trial-listed cases in March 2008. Mr. Reed, then deceased, had been an electrician at Moore Dry Dock, where, Garlock's internal settlement deliberations reveal, "Garlock has been heavily identified in the past."¹⁸¹ Mr. Reed identified Garlock gaskets and packing during his deposition.¹⁸² As shown by Garlock's MEA, Garlock's main concern was that this case was "high risk," with "high verdict potential," "in an extremely bad jurisdiction, being handled by some of the best trial lawyers in the country."¹⁸³ Garlock noted that Ron Eddins, formerly at Waters & Kraus, was "the trial attorney [who] obtained the large verdict and punitive damages award against Garlock in the Treggett case."¹⁸⁴

Discovery in the case included extensive disclosure of exposures to numerous asbestos-containing products, including thermal insulation products. In his case report, a thorough discussion of the evidence required by the California rules, Mr. Reed's counsel stated that he believed he had been exposed to

various asbestos-containing products and/or equipment consisting of, but not limited to, packing, pumps, gaskets, insulation, valves, friction products, boilers, brakes and beginning in the 1940's. The exposures occurred while performing his duties as an electrician and an U.S. Army motor pool technician. He also was exposed while assisting in physical plant upkeep as a buyer and seller of meat from 1946-1975. Mr. Reed was exposed to joint compounds while at West Coast Meats and personally. While working at Moore Dry Dock from 1942-1943 and serving in the Army motor pool from 1943 to 1946, plaintiff is informed and believes he was exposed to asbestos and products containing asbestos in the process of performing maintenance on and being around others as they were

¹⁷⁹ See ACC-6136 (Complaint, dated Oct. 18, 2006).

¹⁸⁰ See ACC-6137 (First Amended Complaint, dated July 23, 2007).

¹⁸¹ ACC-334 (MEA/Reed).

¹⁸² GST-4069 (Reed Dep. Feb. 20, 2007) at 90:15-25.

¹⁸³ ACC-334 (MEA/Reed).

¹⁸⁴ *Id.*

constructing and maintaining various ships and replacing/maintaining vehicle brakes and clutches.¹⁸⁵

Mr. Reed's interrogatory responses pointed to myriad asbestos exposures, other than gaskets, notably including insulation:

Generally, plaintiff was exposed to asbestos products such as *insulation*, gaskets, and packing, from asbestos containing products including, but not limited to, pumps, boilers, valves, turbines air compressors. In general, he was also exposed to asbestos containing products such as brakes, clutches, friction products, and joint compounds. While employed at West Coast Meats, plaintiff was exposed to asbestos containing *insulation*, gaskets and packing from *products containing insulation* including, but not limited to, pumps, boilers, valves, turbines, and air compressors. He also was exposed to asbestos containing joint compounds. While performing personal construction jobs, he was also exposed to asbestos containing joint compounds. He was exposed to asbestos containing brakes, clutches and friction products while performing personal vehicle repairs.

....

Upon information and belief, Plaintiff believes, and therefore alleges that he was exposed to various asbestos-containing products and/or equipment consisting of, but not limited to, packing, pumps, gaskets, *insulation*, valves, deareating [sic: deareating] feed tanks, turbines, compressors, distillers, auxiliary gland condensers, condensers, air ejectors, blowers, fuel oil heaters, purifiers, steam traps, boilers, brakes and purifier heaters beginning in the 1940's. The exposures occurred while performing his duties as an electrician and a U.S. Army motor pool technician. He also was exposed while assisting in physical plant upkeep as a buyer and seller of meat from 1946-1975. In the 1950's and 1960's, Mr. Reed was exposed to joint compounds while building a house and performing a remodel. While working at Moore Dry Dock from 1942-1943 and serving in the Army motor pool from 1943 to 1946, plaintiff is informed and believes he was exposed to asbestos and products containing asbestos in the process of performing maintenance on and being around others as they were constructing and maintaining various ships and replacing/maintaining vehicle brakes and clutches.¹⁸⁶

Mr. Reed also disclosed extensive asbestos exposures during his deposition. He testified that he had worked on several ships while at Moore Dry Dock, and had worked near turbines with insulated pumps, and had seen people installing insulation on the turbines.¹⁸⁷ He testified

¹⁸⁵ GST-4067 (Case Report, dated Apr. 16, 2007) at GST-EST-0174933.

¹⁸⁶ GST-4070 (Amended Responses to General Order Standard Interrogatories) at GST-EST-0175713, GST-EST-0175737 (emphasis added).

¹⁸⁷ GST-4069 (Reed Dep. Feb. 20, 2007) at 26:5-28:20.

that he worked closely with the pipefitters and the insulators on board the ships, that it was a dusty process, and that he was sure he inhaled dust from the insulation spraying.¹⁸⁸

Mr. Reed also testified that he worked as a motor pool mechanic in the army for three and a half years, and believed he had been exposed to asbestos at that time when doing brake jobs and clutch jobs.¹⁸⁹ He testified that he believed he had also been exposed to asbestos at West Coast Meats as a bystander “when a lot of the maintenance work was being done, and it was dusty,” and he helped with work on the trucks.¹⁹⁰ He also stated that there were insulated boilers and pumps that were padded at West Coast Meats.¹⁹¹ He worked on the pipes, valves, insulation and the boilers occasionally, and worked close by the maintenance man on numerous occasions when he removed insulation from the pumps.¹⁹² He observed insulation being installed on many occasions, a “very dusty” job.¹⁹³ He also recalled that during various construction jobs at West Coast Meats asbestos products were used, including sheetrock, and Kaiser and Georgia Pacific mud.¹⁹⁴ Finally, he used asbestos-containing products on some personal construction jobs.¹⁹⁵

After the case settled, the Early firm filed several trust claims on behalf of Mr. Reed’s estate. Garlock contends that fourteen of those claims were based on exposures not disclosed during discovery.¹⁹⁶ Eight of those claims, however, cite to Mr. Reed’s work as an electrician at Moore Dry Dock. Five of those eight claims are accompanied by excerpts from Mr. Reed’s deposition, interrogatory responses, and/or work history sheet provided to Garlock in the tort suit;¹⁹⁷ the other three are not accompanied by any documentation at all.¹⁹⁸

Garlock complains that four other trust claims relied on affidavits executed by Mr. Reed’s wife, and two others by affidavits executed by his son, identifying products that had not been specifically identified in discovery, “despite the fact that the son verified interrogatories

¹⁸⁸ *Id.*

¹⁸⁹ *Id.* at 29:7-32:20.

¹⁹⁰ *Id.* at 37:4-11.

¹⁹¹ *Id.* at 38:20-40:17.

¹⁹² *Id.* at 40:5-42:6.

¹⁹³ *Id.* at 27:8-28:11, 39:5-40:21, 46:1-47:19.

¹⁹⁴ *Id.* at 116:20-117:19.

¹⁹⁵ *Id.* at 123:18-130:16.

¹⁹⁶ *See* GST-8011 at 37.

¹⁹⁷ *See* GST-4180 (Reed B&W Trust Claim) SIMON 27302-06; GST-4181 (Reed Combustion Engineering Trust Claim) at SIMON 27322-29; GST-4185 (Reed DII (Halliburton) Trust Claim) at SIMON 27394-98; GST-4186 (Reed Owens Corning Fibreboard Trust Claim) at SIMON 27412-16; GST-4192 (Reed Raytech Trust Claim) SIMON 27950-52.

¹⁹⁸ *See* GST-4189 (Reed Celotex Trust Claim); GST-4190 (Reed Eagle-Picher Trust Claim); GST-4191 (Manville Trust Claim).

submitted after Mr. Reed passed away.”¹⁹⁹ The affidavits by Mr. Reed’s son, however, were executed in 2011 and 2012; several years after the son had signed interrogatories in the tort case, and well after the March 2008 settlement.²⁰⁰ Garlock did not depose anyone with personal knowledge of the basis for the widow’s and son’s affidavits, nor did Garlock inquire as to what additional investigation claimant’s counsel conducted after settling with Garlock.

Mrs. Reed’s affidavit accompanying the Western Asbestos Trust claim does not name any specific products by name, but simply states in general terms that Mr. Reed was exposed to various asbestos-containing materials while at Moore Dry Dock.²⁰¹ The claim is also accompanied by materials provided to Garlock in the tort suit, including Mr. Reed’s social security records, work history sheet, and responses to interrogatories. It puts forth no independent evidence of exposure. The other three trust claims accompanied by affidavits of Mrs. Reed do not relate to amosite insulation products: her affidavits identify asbestos-containing floor tiles and plaster Mr. Reed used during home renovations, as does one of the affidavits by Mr. Reed’s son.²⁰² Finally, the remaining affidavit of Mr. Reed’s son identifies brake pads used by mechanics at West Coast Meats in Mr. Reed’s presence.²⁰³ Mr. Reed’s work at Moore Dry Dock and West Coast Meats, as well as his work on home renovations was, as shown above, disclosed to Garlock, and Garlock was certainly on notice that he experienced asbestos exposures from many products besides gaskets.

Howard Ornstein

Mr. Ornstein sued Garlock and numerous other defendants, including unnamed DOES 1-450, in Los Angeles County Court on April 9, 2008.²⁰⁴ Mr. Ornstein was exposed to asbestos while in the U.S. Navy, where he was classified as an electrician but mostly did maintenance work. As Garlock noted in its internal evaluation of the case, Mr. Ornstein had identified Garlock packing and gaskets in his interrogatory responses,²⁰⁵ and “Garlock ha[d] been heavily identified in the past” in cases involving the U.S. Navy.²⁰⁶

¹⁹⁹ GST-8011 at 36.

²⁰⁰ See GST-4183 (Reed Federal-Mogul (Ferodo) Trust Claim) at SIMON 27362; GST-4184 (Reed GAF Trust Claim) at SIMON 27379.

²⁰¹ See GST-4188 (Reed Western Trust Claim) at SIMON 27725.

²⁰² See GST-4179 (Reed ARTRA Trust Claim) at SIMON 27290; GST-4182 (Reed Congoleum Trust Claim) at SIMON 27348; GST-4184 (Reed GAF Trust Claim) at SIMON 27379; GST-4187 (Reed USG Trust Claim) at SIMON 27428.

²⁰³ See GST-4183 (Reed Federal-Mogul (Ferodo) Trust Claim) at SIMON 27362.

²⁰⁴ See ACC-6053 (Complaint, dated Apr. 9, 2008).

²⁰⁵ See ACC-319 (TEF/Ornstein) at GST-EST-0556252; GST-3741 (Ornstein’s Interrogatory Responses) at GST-EST-0512294 & Ex. A.

²⁰⁶ ACC-331 (MEA/Ornstein).

Garlock contends that, after it settled the case, Mr. Ornstein filed various trust claims “based on exposures not identified in his tort case.”²⁰⁷ Mr. Glaspy testified that if it had known of those exposures, he would have recommended that the case settle for less than \$450,000.²⁰⁸ But the evidence indicates that Garlock actually did settle the case for less — \$200,000.²⁰⁹ In any event, Garlock showed little concern with Mr. Ornstein’s other exposures while litigating the case. For example, attorneys from Glaspy & Glaspy appeared at Mr. Ornstein’s deposition by telephone, but asked only a few questions, mostly to challenge Mr. Ornstein’s identification of Garlock gaskets. They asked whether Mr. Ornstein recalled seeing Johns-Manville products, but asked no other questions about asbestos insulation products or manufacturers.²¹⁰ As Mr. Simon put it, “Garlock was not very interested in what his thermal insulation exposures were, so it turns out.”²¹¹ Mr. Simon explained that the state of the law in 2008 was such that equipment manufacturers (and presumably, gasket manufacturers like Garlock) could be liable for thermal insulation surrounding their products. Thus, as a strategic matter, Garlock “was not interested in building out those exposures.”²¹²

Nor were Mr. Ornstein’s other exposures accorded any significance during settlement. The case was settled as part of a group settlement of nineteen Simon Eddins cases slated for trial.²¹³ As shown by Garlock’s own MEA, Garlock’s main concern in settling the case was that it considered the case to be “high risk,” with “high verdict potential,” “in an extremely bad jurisdiction, being handled by some [of] the best trial lawyers in the country.”²¹⁴ Garlock noted that Ron Eddins, formerly at Waters & Kraus, was “the trial attorney [who] obtained the large verdict and punitive damages award against Garlock in the Treggett case.”²¹⁵ Garlock also noted that the settlement “[t]hrough rich, [was] favorable and advisable,” and that, “[i]n the recent past,” Garlock had paid Simon Eddins’ plaintiffs even more — “\$300,000 and above on various mesothelioma claims.”²¹⁶

²⁰⁷ GST-8011 at 33.

²⁰⁸ See Hr’g Tr. 4562:2-8, Aug. 12, 2013 (Glaspy).

²⁰⁹ See ACC-319 (TEF/Ornstein) at GST-EST-0556252.

²¹⁰ See GST-3833 (Ornstein Dep. June 4, 2008) at 336:22-362:25; GST-3835 (Ornstein Dep. June 6, 2008) at 950:8-20.

²¹¹ Simon Dep. 299:17-19, Mar. 26, 2013.

²¹² *Id.* at 300:5-301:5, 303:15-19.

²¹³ See ACC-6054 (Letter dated Aug. 4, 2008 noting \$200,000 settlement demand) at GST-EST-337668.

²¹⁴ ACC-331 (MEA/Ornstein).

²¹⁵ *Id.*

²¹⁶ *Id.*

Garlock contends that, during discovery, Mr. Ornstein did not disclose exposures to any products manufactured by bankrupt entities.²¹⁷ As shown at trial, Mr. Ornstein's interrogatory responses disclosed exposures to asbestos insulation products during his tenure with the Navy, stating that:

Howard Ornstein developed malignant mesothelioma as a result of exposure . . . while in the US Navy [] as an ETN on the USS Estes and USS Duval County. [The exposure included] [p]umps and valves [that] were *insulated with asbestos* and contained asbestos gaskets, *all of which were removed in [Ornstein's] presence that created respirable asbestos laden dust.* [Ornstein] also saw machinists and other trades *removing insulation* and fabricating gaskets . . . *all of which created respirable asbestos dust.*²¹⁸

In his work history sheet and case report, Mr. Ornstein also disclosed exposures to Bakelite (a plastic that contained asbestos) while working at National Cash Register, and exposures to various manufacturers' asbestos-containing brakes, clutches and grinding machines while working as a machinist at Capital Auto Supply.²¹⁹

Mr. Ornstein also testified to insulation exposures in his deposition. For example, he testified that he believed he had been exposed to asbestos while cleaning on the USS Estes — that he had to clean and dust off valves and piping wrapped in insulation, that the insulation was sometimes cracked and covered with dirt, dust and fibers.²²⁰ He also testified that he stood fire watch on the USS Estes while it was in dry dock being overhauled in Long Beach Naval Shipyard, and that he saw people working on valves, which were wrapped in insulation.²²¹ Given the nature of these exposures, there is no reason to suppose that Mr. Ornstein knew the names of the insulation products when he came into their presence, still less to fault him for not being able to name them many years later when he was dying of mesothelioma.

As shown at trial, Garlock was fully aware of the kinds of exposures Mr. Ornstein suffered aboard Navy ships. Mr. Glaspy testified that he was aware that the ships were covered in amphibole insulation to which Mr. Ornstein must have been exposed.²²² The evidence at trial also showed that Garlock had access to naval ship records. In September 2008, when Garlock

²¹⁷ See GST-8011 at 33.

²¹⁸ GST-3741 (Ornstein's Interrogatory Responses) at GST-EST-0512293-94 (emphasis added).

²¹⁹ *Id.* at Ex. A; GST-3738 (Case Report) at GST-EST-0179766-67.

²²⁰ See GST-3832 (Ornstein Dep. June 3, 2008) at 112:10-25; *id.* at 209:8-18.

²²¹ See *id.* at 144:3-11, 22-25, 159:21-160:1.

²²² See Hr'g Tr. 4626:13-19, Aug. 22, 2013 (Glaspy) ("Q. Now, your testimony in your expert deposition was that as an electrician on a navy ship, your expectation was Mr. Ornstein would have been exposed to amphibole asbestos all over the ship. That the whole ship would have been covered in amphiboles and he would have been exposed to it. That was your testimony, correct? A. That sounds about right.").

was deciding to settle Mr. Ornstein's case, Garlock received a report from Rushworth Consulting, which reviewed those records, as well as Mr. Ornstein's deposition and other discovery in the case, and described the amosite asbestos to which Mr. Ornstein was exposed during his service in the Navy.²²³ The report noted, for example, the various amosite asbestos piping, such as 85% magnesia, that was specified for the USS Estes and USS Duval County, on which Mr. Ornstein served.²²⁴ The report noted that the USS Estes and USS Duval County

were insulated with many tons of machinery and piping insulation of which 88% or more was or contained amosite asbestos. Such insulation was installed throughout the ships, not just in engineering spaces; therefore, sailors such as Ornstein could not escape the potential for exposure to asbestos dust, wherever in the ships their duties took them."²²⁵ The report concluded that "[d]uring cleaning, dust levels to which [Mr. Ornstein] was exposed probably well exceeded 0.1 f/cc. Much of that dust would have been amosite asbestos fiber."²²⁶

The report also noted that Mr. Ornstein stood firewatch on the USS Estes for two months as the ship was being overhauled at Long Beach Naval Shipyard. "Overhauls," the report noted,

inevitably involve removal and reinstallation of machinery and piping insulation during which time, asbestos dust levels routinely reach 10's or 100's of fibers per centimeter cubed (f/cc). *During cleanup of insulation debris, asbestos dust levels reached as high as 1,000 f/cc. Ornstein was assigned to stand fire watches during this overhaul and would likely have been periodically exposed to such levels during his watches. Much of that dust would have been amosite asbestos fiber.*²²⁷

Garlock now contends that the eleven trust claims submitted by Mr. Ornstein after the settlement were "based on exposures not identified in his tort case."²²⁸ But the USS Estes and/or the Long Beach Naval Shipyard are on the approved site lists for five of those trusts; those site lists are publicly available.²²⁹ The claim on the Amatex trust was based on Mr. Ornstein's work in the shipyard industry in California, and was accompanied only by discovery materials from the tort case, including Mr. Ornstein's deposition testimony and interrogatory responses, and

²²³ See GST-0918 at [pdf page] 10-25 (Rushworth Report). See Hr'g Tr. 4632:8-4636:18, Aug. 22, 2013 (Glaspy).

²²⁴ See, e.g., GST-0918 (Rushworth Report) at [pdf page] 10-25; *id.* at [pdf page] 16-17, 20.

²²⁵ *Id.* at [pdf page] 25.

²²⁶ *Id.*

²²⁷ *Id.* (emphasis added).

²²⁸ GST-8011 at 33.

²²⁹ See ACC-492f (AWI Site List) at 19; ACC-492j (Combustion Site List) at [pdf page] 21; ACC-492s (FB Site List) at 161; ACC-492r (OC Site List) at 179.

Navy records, all of which were provided to Garlock in the tort suit.²³⁰ Similarly, the claim submitted to the Thorpe Insulation trust, based on Mr. Ornstein's work on the USS Estes and at the Long Beach Naval Shipyard, was also accompanied only by discovery materials that had been provided to Garlock.²³¹

Garlock objects that seven of the trust claims (three of which are site-list claims)²³² are accompanied by affidavits executed by Mr. Ornstein in which he stated he had been exposed to specific products for which those trusts were responsible, such as Armstrong 85% Magnesite Pipe Covering, although he did not identify those specific products during discovery in the tort suit.²³³ Mr. Simon explained that Mr. Ornstein's affidavits "would have been more aptly stated as based on information and belief,"²³⁴ because the information as to the specific products was likely culled from Navy ship records (such as the records relied on by the defendants' expert Rushworth Consulting) after the suit was settled. He also noted that after settlement there was no duty to supplement discovery in the tort suit:

[T]hese things are temporal. We are guilty of not always having been able to get all the Navy records in before we can get a living mesothelioma claimants' case to trial while he or she is alive. It's a fact. And so sometimes the case will get resolved and we will get more information and on that basis we can, in good faith, submit a trust claim but there is nothing else to supplement. The case didn't go to verdict. It settled. There is really nothing further to add. There is no remaining tort case to supplement. That happens.²³⁵

Mr. Ornstein's affidavit submitted to the Armstrong World Industries Trust appears to be incorrect in stating that he "would remove and replace insulation."²³⁶ Mr. Ornstein is now deceased, and the circumstances under which the affidavit was drafted remain unexplained. His estate cannot be treated as a party-opponent in this case, and the affidavit is unexamined hearsay, and does not prove anything.

Garlock had the same or greater resources as plaintiff's counsel did to investigate Mr. Ornstein's asbestos exposures in greater depth, if Garlock had judged it to be in its best interest to do so. It chose to settle the case instead.

²³⁰ See GST-3874 (Ornstein Amatex Trust Claim).

²³¹ See GST-3891 (Ornstein Thorpe Insulation Trust Claim).

²³² See GST-3872 (Ornstein ACandS Trust Claim); GST-3875 (Ornstein AWI Trust Claim); GST-3878 (Ornstein Combustion Engineering Trust Claim).

²³³ See GST-8011 at 33, n.6.

²³⁴ See Simon Dep. 156:11-157:4, Jan. 4, 2012.

²³⁵ Simon Dep. 177:22-179:01, Jan. 4, 2013; Hr'g Tr. 4631:7-4632:5, Aug. 22, 2013 (Glaspy).

²³⁶ See GST-8011 at 34 (citing GST-3873 (Ornstein AWI Trust Claim) at SIMON 28055).

Belluck & Fox Claimants

Robert Flynn

Mr. Flynn worked as a laborer, boilermaker and shipfitter at the Brooklyn Naval Shipyard for several years beginning in 1941,²³⁷ and again from 1952 until 1965.²³⁸ He sued Garlock and numerous other defendants, including Fairbank Morse Engine, a sister company of Garlock, in New York Supreme Court on September 28, 2004.²³⁹

The Flynn case was scheduled for trial in September 2005. Garlock moved for summary judgment on June 16, 2005, for lack of product identification, because Mr. Flynn could not identify Garlock gaskets.²⁴⁰ In response, Belluck & Fox showed that although Mr. Flynn could not himself identify Garlock gaskets, workers on three of the ships on which he had worked had identified Garlock gaskets in depositions taken in unrelated cases.²⁴¹ The outcome of the motion is not reflected in the record available in this proceeding.

Garlock settled Mr. Flynn's claim for \$150,000. As Garlock noted in the MEA approving the settlement, "Garlock identification has been well established" at the Brooklyn Naval Shipyard, and Garlock recognized that "[t]his settlement is favorable to Garlock, particularly when weighed against the dangers of trying a case in New York City."²⁴²

Discovery included extensive disclosures of Mr. Flynn's exposures to other asbestos-containing products. His interrogatory responses stated that, at the Brooklyn Naval Shipyard, he may have been exposed to "pipe covering, cement, gaskets, cloth, refractory materials, floor tiles, packing, joint compounds, block, wallboard, plaster, roofing products, fiber and other products," plus materials installed in equipment including "boilers, turbines, pumps, furnaces, compressors, panels, brakes and related equipment."²⁴³ Chart A to his interrogatory responses listed ships on which he worked (USS Ogden, USS Missouri, USS Bennington, USS Constellation, USS Saratoga, USS Independence, USS Hornet, USS Lexington, USS Ticonderoga, and TT Brooklyn) and states he worked as a boilermaker and around others repairing pumps and other equipment on the ships, and that he was exposed to installation of

²³⁷ See GST-2757 (Flynn Dep. Oct. 29, 2004) at 39:1-4.

²³⁸ See GST-2761 (Plaintiffs' Interrogatories, dated Oct. 21, 2004) at GST-EST-0514203; ACC-326 (MEA/Flynn).

²³⁹ See ACC-6026 (Flynn Complaint).

²⁴⁰ See ACC-6032 (Order to Show Cause/Summary Judgment Motion/Garlock) at [pdf page] 3.

²⁴¹ See ACC-6031 (personnel records) at [pdf page] 217 [attached at end of personnel record]; see also ACC-7642 (Zatz Dep., *In re New York City Asbestos Litigation*).

²⁴² ACC-326 (MEA/Flynn).

²⁴³ See GST-2761 at GST-EST-0514190.

insulation on the TT Brooklyn.²⁴⁴ Mr. Flynn also identified additional ships in his deposition for trial, including the USS Intrepid, the USS Antietam, the USS Constellation, and the USS Rich.²⁴⁵

Mr. Flynn also testified at length regarding his numerous exposures to asbestos during his depositions. He described exposures to products including boilers and pipes,²⁴⁶ gaskets, valves, packing, compressors,²⁴⁷ and ducts and flanges.²⁴⁸ He stated that when he removed gaskets and punched holes in gaskets, dust would “fly around.”²⁴⁹ He detailed his work in using asbestos powder mortar to make firebricks for boilers, and removing insulation from boilers, which created a great deal of dust.²⁵⁰ He also testified that he installed and removed sheets of insulation on a refrigeration unit on the USS Bennington,²⁵¹ and saw asbestos lagging being removed on the USS Bennington, USS Missouri, and USS Lexington.²⁵²

In addition, Belluck & Fox provided Garlock with voluminous ship records detailing machinery and equipment on the ships on which Mr. Flynn served.²⁵³ Garlock’s attorneys, Segal, McCambridge, hired McCaffery & Associates to provide machinery history reports, several of which were produced in this bankruptcy case by Belluck & Fox. The reports identify asbestos-containing products on those ships. The report on the USS Bennington, for example, shows there were Fairbanks Morse engines on the ship,²⁵⁴ that Garlock packing was used, and that asbestos insulation from Union Asbestos was placed on the ship in 1944. The report on the USS Hornet identifies Babcock & Wilcox boilers and Fairbanks Morse engines, as well as

²⁴⁴ See *id.* at GST-EST-0514203.

²⁴⁵ See GST-2756 (Trial Testimony of Flynn, Dec. 3, 2004) at 45:7-46:5. See also ACC-6031 (personnel records).

²⁴⁶ GST-2756 at 41:1-21, 42:16-43:4 (identifying exposures to Babcock & Wilcox and Foster Wheeler boilers). See also GST-2759 (Flynn Dep. Nov. 19, 2004) at 397:4-398:25, 410:2-411:24.

²⁴⁷ GST-2759 at 342:5-352:9, 357:11-25, 369:11-382:23. Mr. Flynn testified that he used wire brushes to scrape the flanges and that it generated a great deal of dust. *Id.* at 383:3-386:10.

²⁴⁸ *Id.* at 394:2-16, 399:2-410:10.

²⁴⁹ GST-2756 at 50:9-51:7.

²⁵⁰ *Id.* at 38:1-41:16.

²⁵¹ See GST-2759 at 342:16-25.

²⁵² *Id.* at 397:14-399:8.

²⁵³ See ACC-6872-7590 (ship records).

²⁵⁴ See ACC-6018 (Flynn Historical Research Report USS Bennington) at 2. A January 14, 2009 email from Joe Belluck to Bernadette Catalana, discussing settlement negotiations, notes that there is “extensive Fairbanks Morse” identification. ACC-733 (January 14, 2009 letter) at ACC-EST-0039028. As noted in the Committee’s Post-Hearing Brief, Garlock’s settlements released related companies, including Fairbanks Morse.

Garlock and Armstrong Cork products.²⁵⁵ The USS Intrepid machinery report identifies, *inter alia*, Babcock & Wilcox boilers and Worthington (DII (Halliburton)) pumps.²⁵⁶ That report states that McCaffery & Associates had provided Garlock with another report on Essex-class ships (a class of ships that included the USS Intrepid), detailing the insulation products on the USS Intrepid.²⁵⁷ Garlock did not produce that report on Essex-class ships (or the other machinery reports) in this proceeding, despite stipulating that the Debtors would produce “any documents produced to the Debtors or obtained by the Debtors from any other source concerning the claimant’s or injured person’s exposures to asbestos-containing products or the identification of any products involved in such exposures.”²⁵⁸

Belluck & Fox also identified co-workers in its witness lists, who identified non-Garlock asbestos-containing products in their depositions.²⁵⁹ For example, one witness, Herbert Sobel, testified in his deposition to the presence of several bankrupts’ products at the Brooklyn Navy Yard, including Owens Corning, Combustion Engineering, and Manville products,²⁶⁰ all of which Garlock now claims were not identified in discovery.²⁶¹

After the settlement, Mr. Flynn’s attorneys filed fifteen claims with trusts on his behalf. Seven of those trusts did not even come into existence until after the settlement.²⁶² Garlock concedes that Babcock & Wilcox products were disclosed in discovery, but contends that

²⁵⁵ See ACC-6019 (Flynn Historical Research Report USS Hornet) at 2.

²⁵⁶ See ACC-6020 (USS Intrepid Historical Research Report Vol. I) at 2.

²⁵⁷ *Id.*

²⁵⁸ Stipulation and Order Resolving Motion of the Official Committee of Asbestos Personal Injury Claimants to Determine Insufficiency of the Debtors’ Answers to the Committee’s First Requests for Admission and to Compel Debtors to Respond to Certain Discovery Requests ¶ 5.f., filed Aug. 1, 2012 [Dkt. No. 2415].

²⁵⁹ See ACC-6027 (Plaintiff’s Fact Witness List, dated Mar. 30, 2005) at 2; ACC- 6028 (Amendment to Plaintiff’s Fact Witness List, dated May 12, 2005); ACC-6029 (Amendment to Plaintiff’s Fact Witness List, dated May 18, 2005).

²⁶⁰ See ACC-7645 (Herbert Sobel Dep. Jan. 22, 1999) at 32:3-6 (Garlock), 50:4-13 (Flexitallic), 61:1-8 (Owens Corning), 120:14-16 (Babcock & Wilcox), 127:19-128:4 (Combustion Engineering), 136:2-10 (Garlock). See also ACC-7645 (Herbert Sobel Dep. Feb. 12, 1999) at 28:20-29:4 (Manville), 40:7-21 (GE, Westinghouse, Combustion Engineering, Babcock & Wilcox, Foster Wheeler, Goulds, Ingersoll Rand), 46:9-15 (Owens Corning), 47:19-25 (Garlock and John Crane).

²⁶¹ See GST-8011 at 42.

²⁶² See GST-0138 (RAND Report) at 26-27, Table 4.1 (noting effective dates of trusts: (ABB Lummus – 2006; Armstrong World Industries – 2006; Combustion Engineering – 2006; Owens Corning Fibreboard – 2006; Kaiser Aluminum – 2006; Owens Corning – 2006; Porter Hayden – 2006).

fourteen of the trust claims were based on exposures “not disclosed” to Garlock.²⁶³ This is a gross mischaracterization of the record, which, as shown above, reflects that Mr. Flynn freely disclosed his exposures to insulation and other asbestos products in his interrogatories and during his deposition, and that Garlock also had available to it other evidence of exposure, including ship records. Garlock also had access to the depositions of hundreds, if not thousands, of Brooklyn Naval Shipyard employees who testified in the New York City Asbestos Litigation (including Mr. Sobel’s deposition and the deposition of other witnesses named in Mr. Flynn’s witness lists). Even if inadmissible hearsay in the Flynn trial, the depositions nevertheless have been relied on by Garlock’s experts,²⁶⁴ as Mr. Turlik admitted.²⁶⁵

Each of Mr. Flynn’s trust claims was based principally on his having worked at the Brooklyn Naval Yard,²⁶⁶ a site that is infamous for its asbestos exposures,²⁶⁷ and that is included

²⁶³ GST-8011 at 41-42. As discussed in the Committee’s Post-Hearing Brief, ballots and 2019 statements do not constitute admissions of exposure.

²⁶⁴ See Belluck Dep. 149:22-150:5, Dec. 14, 2012 (testifying that for a claimant that worked at “the Brooklyn Navy Yard, Garlock would certainly have had access to hundreds, if not thousands of Brooklyn Navy Yard depositions, where there were other employees present at that site.”). See, e.g., ACC-7643 (Trial testimony of Richard Widmer, Apr. 18, 2001) (a worker at Brooklyn Naval Shipyard, who testified regarding his exposures to various products, including Manville at 59:13-19, and USG and NARCO at 62:12-16).

²⁶⁵ See Hr’g Tr. 2348:21-23, Aug. 1, 2013 (Turlik). See also, e.g., ACC-514 (Garlock Supplemental Fact Witness Disclosure Homa); see *infra* note 267.

²⁶⁶ GST-2777 (Flynn ABB Lummus Trust Claim) at WATERS 02900; GST-2778 (Flynn AWI Trust Claim) at WATERS 02920; GST-2779 (Flynn B&W Trust Claim) at WATERS 02938; GST-2780 (Flynn Combustion Engineering Trust Claim) at WATERS 02967; GST-2781 (Flynn Celotex Trust Claim) at WATERS 02988; GST-2782 (Flynn Eagle-Picher Trust Claim) at WATERS 03006; GST-2783 (Flynn FB Trust Claim) at WATERS 03024; GST-2784 (Flynn Manville Trust Claim) at WATERS 03043; GST-2785 (Flynn DII (HAL) Trust Claim) at WATERS 03050; GST-2786 (Flynn Kaiser Trust Claim) at WATERS 03086; GST-2787 (Flynn Keene Trust Claim) at WATERS 03131; GST-2788 (Flynn OC Trust Claim) at WATERS 03150; GST-2789 (Flynn Porter Hayden Trust Claim) at WATERS 03170; GST-2790 (Flynn Raytech Trust Claim) at WATERS 03195; GST-2791 (Flynn UNR Trust Claim) at WATERS 03206.

²⁶⁷ Exposures at the Brooklyn Naval Yard have spurred thousands of asbestos cases. See, e.g., *In re Brooklyn Navy Yard Asbestos Litig.*, 971 F.2d 831, 835 (2d Cir. 1992) (“From the 1930’s through 1966, thousands of workers at the New York Naval Shipyard, commonly known as the Brooklyn Navy Yard (BNY), breathed air laden with carcinogenic asbestos fibers.”). See also *In re E. & S. Dists. Asbestos Litig.*, 772 F. Supp. 1380, 1385 (E.D.N.Y. & S.D.N.Y. 1991) (explaining the consolidation of several hundred cases involving factual issues arising in cases of workers exposed to asbestos while working in the Brooklyn Navy Yard). See also ACC-7645 (Herbert Sobel Dep. Feb. 12, 1999) at 42:14-20 (stating that there were “heavy rain[s] of asbestos” at the Brooklyn Naval Yard).

on the approved site lists of many of the trusts.²⁶⁸ Mr. Flynn's claims submitted to the Manville and Celotex trusts had no supporting documentation attached. The remaining claims were supported by excerpts from Mr. Flynn's depositions in the tort suit.²⁶⁹

Peter Homa

Mr. Homa was an 80-year-old deceased mesothelioma victim who worked at the Brooklyn Navy Shipyard from 1954-1956 as a boilermaker and shipfitter.²⁷⁰ His case was referred by the David Law Firm to Belluck & Fox, a prominent New York asbestos plaintiffs' firm. Belluck & Fox filed suit on Mr. Homa's behalf against Garlock and numerous other defendants, including Fairbanks Morse Pumps, a sister company of Garlock, on or around May 2, 2008.²⁷¹ Garlock settled with Mr. Homa during trial in May 2009. The David Law Firm filed several trust claims on Mr. Homa's behalf after the case was settled. Garlock contends that these claims — including a claim against the National Gypsum trust on the basis that its successor supplied fiber for Garlock gaskets²⁷² — were based on exposures not identified during the tort suit, and that had Garlock known of those exposures, its trial risk would have been reduced and it would have been able to settle the case for less.

As shown below, Mr. Homa provided ample discovery, including voluminous records related to the ships on which he worked, from which Garlock could have determined Mr. Homa's likely asbestos exposures.²⁷³ Mr. Belluck testified that Garlock was not focused on ascertaining the specific products to which Mr. Homa was exposed when it settled the case. Rather, Garlock's main concerns were tying the Homa settlement to an agreement with Belluck

²⁶⁸ See ACC-492f (AWI Site List) at 58; ACC-492g (B&W Site List) at 91; ACC-492j (Combustion Site List) at [pdf page] 22; ACC-492l (Eagle Picher Site List) at 33; ACC-492s (FB Site List) at 42; ACC-492k (DII (HAL) Site List) at 102; ACC-492q (Keene Site List) at 6; ACC-492r (OC Site List) at 488.

²⁶⁹ Mr. Flynn's Kaiser Trust claim also names the USS Saratoga as an exposure site, and has attached to it some discovery responses from unrelated cases demonstrating the presence of Kaiser products on that ship. GST-2786. The Porter Hayden claim, which is based on exposure to Johns-Manville products, has attached to it deposition excerpts from an unrelated case identifying Johns-Manville products at the Brooklyn Naval Yard. GST-2789. Mr. Turlik testified that such evidence was not admissible against the plaintiff in an unrelated tort suit since the plaintiff was not a party to the action in which the discovery was taken. But trusts are not prevented from accepting such evidence as establishing the presence of their predecessors' products in places and under circumstances likely to have exposed a claimant such as Mr. Flynn, whether or not the claimant has any exposure evidence specific to his own case.

²⁷⁰ See ACC-329 (MEA/Homa); GST-3629 (Homa Interrogatory Responses) at GST-EST-0513851.

²⁷¹ ACC-6398 (Homa Summons and Verified Complaint, dated May 2, 2008).

²⁷² See GST-3605 (Homa NGC Trust Claim) at DAVID 01341-45, DAVID 01385-86.

²⁷³ See ACC-6592-7354 (ship records).

& Fox that (1) all of their clients' claims going forward would be settled according to a matrix, with fixed settlement amounts based on age, occupation, illness and jurisdiction, and (2) the amount Garlock would pay the firm's clients as a group each year would be capped, with the cap to be reduced each year.²⁷⁴

Garlock did not condition the Homa settlement, or any settlement, on a representation by the plaintiff regarding exposures to non-Garlock products.²⁷⁵ Indeed, evidence of other exposures did little to reduce Garlock's trial risk: as Mr. Belluck noted in his deposition in this case, asbestos defendants who are found reckless are jointly and severally liable under New York law.²⁷⁶ Garlock was found reckless by at least one jury in New York,²⁷⁷ and was at real risk of being found reckless in every other case, including Mr. Homa's. Not surprisingly, the only exposure evidence Garlock required when settling cases was that related to Garlock products. As Garlock itself had acknowledged years earlier, "Garlock identification has been well established" at the Brooklyn Navy Shipyard,²⁷⁸ where Mr. Homa worked, and there was extensive Garlock product identification and exposure evidence in the Homa case.²⁷⁹

For a number of years, Garlock and Belluck & Fox had settled or dismissed consensually all of the Belluck & Fox trial-listed cases on an annual basis. In late 2008, while Garlock and Belluck & Fox were engaged in settlement negotiations for the 2009 trial-listed cases, Belluck & Fox acceded to Garlock's request for a hiatus in discovery for all cases, including Mr. Homa's, and adjourned the Trautman case at Garlock's request.²⁸⁰ Settlement negotiations centered mainly on age, occupation and disease, as well as jurisdiction, the factors reflected in the matrix deal on which the parties ultimately agreed.²⁸¹ The basic economic terms of a settlement for the 2009 trial-listed cases were negotiated well before the Homa trial, but Garlock then insisted on settling a larger number of cases for the same amount of money, and on having the settlement

²⁷⁴ Belluck Dep. at 100:9-102:23, 114:21-25, Dec. 14, 2012.

²⁷⁵ *Id.* at 329:13-331:22.

²⁷⁶ *Id.* at 107:11-108:21; *see also* N.Y. C.P.L.R. § 1602.

²⁷⁷ *See* ACC-404 (Reynolds verdict sheet) at ACC-EST-0038846. Although this verdict was eventually overturned, the appellate ruling did not speak to the recklessness finding. *See Reynolds v. Amchem Prods. Inc.*, 822 N.Y.S.2d 216 (N.Y. App. Div. 4th Dep't) (affirming trial court's judgment), *rev'd*, 872 N.E.2d 232 N.Y.

²⁷⁸ ACC-329 (MEA/Homa).

²⁷⁹ *See, e.g.*, GST-3621 (Homa Trial Tr. May 7, 2009) at 897:4-6 (Mr. Homa stated that nine times out of ten, the ships carried Garlock gaskets), 913:25-914:9, 924:11-21. *See also* ACC-317 (TEF/Homa) (noting that there was Garlock product identification in interrogatory responses and in Mr. Homa's deposition); ACC-6404 (Homa Dep. June 17, 2008) at 60:24-61:5.

²⁸⁰ ACC-733 (compilation of email exchanges between Joe Belluck and Bernadette Catalana, dated Oct. 9, 2008); Belluck Dep. 118:1-21, 293:4-7, Dec. 14, 2012.

²⁸¹ Belluck Dep. 100:2-24, 104:10-25, Dec. 14, 2012.

tied to an ongoing matrix deal and an annual reduction in the cap on settlements.²⁸² When negotiations reached an impasse, the Homa case happened to be the first Belluck & Fox case in the trial queue. In the midst of that trial, Belluck & Fox and Garlock reached agreement on the resolution of the 2009 trial list, including Homa, on the matrix that would apply on an ongoing basis, and on annual decreases in the “cap.”²⁸³

Garlock’s contention that Mr. Homa’s trust claims were based on undisclosed exposures is contrary to the record,²⁸⁴ which shows that Garlock was aware of Mr. Homa’s potential other exposures before it settled. Discovery included extensive disclosures of Mr. Homa’s exposures to insulation and other asbestos products. In the Initial Fact Sheet appended to Mr. Homa’s complaint, and in Chart A appended to his Interrogatory Responses, Mr. Homa stated that he worked from 1954-1976 at the Brooklyn Navy Yard and on the following ships: USS Sitkin, USS Canberra, USS Talbot County, USS Springfield, USS Sandoval, USS Lowry, USS Furse, USS Fred T. Berry, USS Pensacola.²⁸⁵ In his interrogatory responses, Mr. Homa stated that while in the Navy and on the named ships, he worked as a boiler technician and command master chief, that he believed he was exposed to asbestos from gaskets and packing, and that he was “exposed to, handled, and/or worked with the asbestos contained in and/or covering boilers, pumps, valves, blowers and other like equipment.”²⁸⁶ As an experienced asbestos litigant, Garlock was certainly chargeable with knowledge that the asbestos-containing material referred to as “contained in and/or covering” such equipment was insulation.

Garlock complains that Mr. Homa did not specifically name any bankrupt companies in his interrogatory responses.²⁸⁷ But Mr. Homa’s interrogatory responses clearly stated that although he could not identify all of the manufacturers of the asbestos products to which he was exposed, “he would have been exposed to, would have handled and/or worked with *all such materials manufactured during the period he was employed.*”²⁸⁸ As Mr. Belluck explained, the interrogatory responses were prepared shortly after Mr. Homa retained Belluck & Fox, and reflected the firm’s understanding at the time. Mr. Belluck also testified that it is not common in New York state court practice to supplement interrogatory responses.²⁸⁹

²⁸² *Id.* at 101-02; Hr’g Tr. 2448-49, Aug. 1, 2013 (Turlik); ACC-733 (Belluck settlement correspondence).

²⁸³ Belluck Dep. 100:10-102:23, 114:1-120:16, Dec. 14, 2012; ACC-733.

²⁸⁴ GST-8011 at 14.

²⁸⁵ ACC-6398 (Homa Complaint) at B&F0000077; GST-3629 (Plaintiffs’ Response to Interrogatories, dated May 29, 2008) at GST-EST-0513851-52.

²⁸⁶ GST-3629 at GST-EST-0513851.

²⁸⁷ *See* GST-8011 at 13.

²⁸⁸ GST-3629 at GST-EST-0513851 (emphasis added).

²⁸⁹ Belluck Dep. 147:4-148:2, Dec. 14, 2012.

In his deposition, Mr. Homa testified that he was exposed to dust from asbestos pads, and insulation on boilers, pipes and valves.²⁹⁰ Garlock acknowledges that Mr. Homa specifically recalled boilers manufactured by Babcock & Wilcox and Flexitallic gaskets, but complains that Mr. Homa did not identify any other bankrupt companies.²⁹¹ But while the defendants asked Mr. Homa if he recognized the names of a number of bankrupt *companies*, they asked him about only a select few actual *products*.²⁹² Mr. Homa also testified that he recalled seeing “Combustion Engineering” on boilers,²⁹³ and that the name Manville was familiar to him,²⁹⁴ but Garlock’s position here is that his testimony was not sufficient to identify those companies.

Garlock also noticed its intent to introduce into evidence depositions of other workers at the Brooklyn Navy Yard in which insulation products were identified.²⁹⁵ For example, Marvin Zatz testified to the presence of Manville and Corning insulation products at the Brooklyn Navy Yard;²⁹⁶ Garlock nonetheless contends in this proceeding that those products were not identified in the Homa case.²⁹⁷

Significantly, during discovery, Belluck & Fox provided Garlock with voluminous ship records, most, if not all, of which were from the National Archives and certified.²⁹⁸ These records detailed the machinery and equipment used on the ships on which Mr. Homa was stationed, and provided evidence of the presence of asbestos insulation products. Garlock admits that it introduced many of the records at trial, and used them in conjunction with expert testimony to demonstrate that products manufactured by bankrupt companies were present on the ships.²⁹⁹ Garlock’s complaint that Mr. Homa’s attorneys “attempted to cast doubt” on this evidence has nothing to do with disclosure.³⁰⁰ And until there was a settlement, the plaintiff was entitled to put Garlock to its proof in its effort to allocate responsibility to other manufacturers, just as Garlock was entitled to — and did — put plaintiffs to their proof to demonstrate exposure

²⁹⁰ See ACC-6405 (Homa Trial Testimony, Oct. 2, 2008) at 36:2-22, 44:2-18, 49:2-25. He identified “Crane, Yarway and Leslie” valves. GST-2897 (Homa Dep. June 18, 2008) at 161:18-23.

²⁹¹ See GST-8011 at 13.

²⁹² See GST-2897 (Homa Dep. June 18, 2008) at 260:25-270:25. See *id.* at 289:10-13 (Kaylo), 289:14-16 (Unibestos).

²⁹³ See Belluck Dep. 163:1-23, Dec. 14, 2012; GST-2897 at 263:14-25.

²⁹⁴ GST-2897 at 265:18-22.

²⁹⁵ See ACC-514 (Garlock’s Supplemental Fact Witness Disclosure).

²⁹⁶ See ACC-7642 (Zatz Dep. Feb. 4, 2005) at 261:20-21[*pdf* page 72].

²⁹⁷ See GST-8011 at 16.

²⁹⁸ See Belluck Dep. 190:13-17, 205:3-21, 211:12-22, Dec. 14, 2012. See also ACC-6592-7354 (ship records).

²⁹⁹ GST-8011 at 13, n.5.

³⁰⁰ *Id.* at 14.

to Garlock's products. Moreover, *Mr. Homa's own expert witnesses* testified at trial that amosite insulation was used in the boiler rooms and throughout ships on which Mr. Homa served, and that he would have been exposed to the dust from those products, which could contribute to causing mesothelioma.³⁰¹

Indeed, Garlock was of the view that there was enough evidence presented at trial to persuade the jury to allocate responsibility to almost *six dozen* other entities, including several bankrupts: Garlock's proposed verdict form listed Babcock & Wilcox, which Mr. Homa specifically mentioned in his deposition,³⁰² as well as Combustion Engineering, Eagle Picher, Keene and "UNARCO (Unibestos) Insulation."³⁰³ (Unibestos insulation, of course, is an insulation product with a very high percentage of amosite.³⁰⁴) Garlock now contends that Mr. Homa's claims to those companies' successor trusts were based on exposures that had not been disclosed to Garlock.³⁰⁵ Moreover, Garlock did not even name Flexitallic or DII (Haliburton) on its verdict sheet, presumably for strategic reasons, even though, as Garlock admits, Mr. Homa disclosed exposures to Flexitallic gaskets and Worthington pumps.³⁰⁶

Garlock contends that the David law firm identified trust claims before the lawsuit was filed, and points to eight claims that were filed the day after the case was settled.³⁰⁷ According to Garlock, Belluck & Fox instructed the David Firm not to file Mr. Homa's trust claims until after the trial, which, Garlock contends, was a violation of the New York City Case Management Order ("NYC CMO").³⁰⁸ Belluck & Fox, however, took the position that the NYC CMO required them to file only *intended* claims, and not those that were merely *anticipated*,³⁰⁹ an interpretation recently articulated by the same court that promulgated the NYC CMO: "The CMO requires Plaintiffs to file their *intended* claims with the various bankruptcy trusts within certain time limitations, not claims they may or may not *anticipate* filing."³¹⁰ Mr. Belluck was

³⁰¹ See, e.g., GST-3616 (Trial Tr. Apr. 29, 2009) at 209, 218-21 (Moline); GST-3617 (Trial Tr. Apr. 30, 2009) at 280-81 (Moline); GST-3618 (Trial Tr. May 1, 2009) at 457, 484-87; 507, 509 (Hatfield); GST-3619 (Trial Tr. May 4, 2009) at 573-74 (Hatfield).

³⁰² See GST-2897 (Homa Dep. June 18, 2008) at 290:22-291:5.

³⁰³ ACC-385 (Garlock's Proposed Verdict Sheet in Homa). See GST-2897 at 260:25-270:24.

³⁰⁴ See Hr'g Tr. 2484:14-24, Aug. 1, 2013 (Turlik). Pittsburgh Corning later became responsible for Unibestos.

³⁰⁵ GST-8011 at 14.

³⁰⁶ See *id.* at 13 & 16.

³⁰⁷ See *id.* at 14.

³⁰⁸ *Id.* at 14. See Amended Case Management Order, *In re New York City Asbestos Litig.*, Index No. 40000/88 (N.Y. Sup. Ct. Sept. 20, 1996, as amended May 26, 2011) ("NYC CMO").

³⁰⁹ See Belluck Dep. 82:10-17, 89:2-90:2, Dec. 14, 2012.

³¹⁰ *In re New York City Asbestos Litig.*, 2012 WL 6554893, at *11 (N.Y. Sup. Ct. Nov. 15, 2012) (emphasis in original).

of the view that claims are not “intended,” within the meaning of the NYC CMO, until the decision is made to file them.³¹¹ Garlock now takes issue with Mr. Belluck’s understanding of the difference between anticipated and intended claims, but that is a dispute for the New York courts, not this Court. Garlock claims that it was aware of “disappearing” trust claims since 2000.³¹² Yet it never sought a ruling that any plaintiff, including Mr. Homa, was in violation of the NYC CMO, and never sought to have a case removed from the trial docket until a plaintiff filed trust claims, a sanction provided for under that order.³¹³

Garlock has grossly mischaracterized the testimony of both Mr. Cooper of the David Law Firm, and Joseph Belluck of Belluck & Fox. Mr. Cooper did not state his firm “intended to file and could have filed” Mr. Homa’s trust claims long before his trial, or that Belluck & Fox “instructed the David Firm not to file Trust claims before Mr. Homa’s case was concluded.”³¹⁴ Rather, Mr. Cooper said only that the decision of when to file Mr. Homa’s trust claims was made in the best interests of the client, and that Belluck & Fox had input into the decision.³¹⁵ Mr. Belluck did not “contradict” Mr. Cooper; he simply said he did not know the specifics of any communication with the David Firm on the Homa case, although he expected there would have been communication between the firms.³¹⁶ (Mr. Belluck was not Mr. Homa’s trial attorney; his partner Jordan Fox played that role.)³¹⁷

In any event, Garlock has not demonstrated, and cannot demonstrate, that it was prejudiced because the trust claims were not filed before trial. Garlock had ample evidence of Mr. Homa’s other exposures, and had the same investigative tools as Mr. Homa’s own attorneys to determine his potential trust claims. Indeed, each of the eight trust claims filed by Mr. Homa’s attorneys when the case settled were site-list claims based on Mr. Homa’s deposition testimony that he worked at the Brooklyn Navy Yard and other worksites.³¹⁸ Moreover, Garlock

³¹¹ See Belluck Dep. 82:13-85:13, Dec. 14, 2012.

³¹² GST-0997 (Bates Rebuttal Report) at 65-66.

³¹³ See Belluck Dep. at 151:19-152:8, Dec. 14, 2012. NYC CMO at 40-41, 44-49.

³¹⁴ GST-8011 at 14.

³¹⁵ Cooper Dep. 75:11-17, Feb. 1, 2013 (“Q. . . . Is this an instance where a decision was made to delay the filing of claims because it was in the client's best interest? A. Yes, that's correct. Q. Did Belluck & Fox have any input into that decision? A. Yes.”).

³¹⁶ Belluck Dep. 187:18-25, Dec. 14, 2012 (“Q. . . . Did someone from your law firm call The David Law Firm and tell them they could file their trust claims now? A. I don't remember a communication to The David Law Firm that would have encompassed that. It certainly was our practice to keep them posted on the progress of the case and tell them when settlements were reached.”).

³¹⁷ See Belluck Dep. 55:2-14, Dec. 14, 2012.

³¹⁸ See GST-3591 (Homa AWI Trust Claim) at DAVID 00360; GST-3592 (Homa B&W Trust Claim) at DAVID 00389; GST-3594 (Homa Celotex Trust Claim) at DAVID 00535; GST-3596 (Homa FB Trust Claim) at DAVID 00582; GST-3599 (Homa DII (HAL) Trust Claim) at (Footnote continued on next page.)

admits that Mr. Homa identified products for which two of the trusts, Babcock & Wilcox and DII (Haliburton), are responsible.³¹⁹ Garlock would have this Court impute bad intent to Belluck & Fox for not disclosing that the David Firm had filed a claim with the Manville Trust on Mr. Homa's behalf before the trial. But Mr. Belluck testified that when his partner, Mr. Fox, told Garlock's attorney before the Homa trial that no trust claims had been filed, "it would have been the information that [Mr. Fox] had available at the time."³²⁰ In any event, Garlock was not prejudiced, as the claim against Manville was based solely on Mr. Homa's occupation as a "Boiler Worker, Repair," rather than any specific exposure evidence that Garlock could have introduced at trial.³²¹ Mr. Cooper testified that, because Manville's products were ubiquitous, its trust generally will pay any claimant who had been diagnosed with mesothelioma.³²²

Garlock complains that Mr. Homa's claims to the G-I (GAF), Kaiser, and Plibrico Trusts cited exposures to specific insulation products that were not disclosed in discovery.³²³ Each of those trust claims relied on Mr. Homa's deposition testimony in the underlying tort case to place him at particular worksites, and on third-party affidavits to place the specific products at the relevant worksite.³²⁴ One of the third-party affidavits was executed after the settlement with Garlock.³²⁵ There is no indication that the other two affidavits were prepared specifically for Mr. Homa's claim or that, before the Homa trial, Mr. Homa's attorneys had made the connection between those affidavits and Mr. Homa. In any event, such third-party affidavits would not be

(Footnote continued from previous page.)

DAVID 00932; GST-3604 (Homa Keene Trust Claim) at DAVID 01335; GST-3606 (Homa OC Trust Claim) at DAVID 01463; GST-3612 (Homa USG Trust Claim) at DAVID 01728.

³¹⁹ See GST-8011 at 16.

³²⁰ See Belluck Dep. 200:13-201:2, Dec. 14, 2012.

³²¹ GST-3602 (Homa Manville Trust Claim) at DAVID 01209.

³²² Cooper Dep. 98:10-99:1, Feb. 1, 2013. See also *In re Joint E. & S. Dist. Asbestos Litig.*, 129 B.R. 710, 742 (E.D.N.Y. & Bankr. S.D.N.Y.1991), *vacated on other grounds*, 982 F.2d 721 (2d Cir.1992), *modified*, 993 F.2d 7 (2d Cir.1993) ("According to most sources, from the 1920's until the 1970's Johns-Manville was both the largest manufacturer of asbestos-containing products and the largest supplier of [raw] asbestos in the United States. . . . The company boasted in an article in Asbestos Magazine in 1970, that 'Johns-Manville participates in almost every facet of the Asbestos Industry and is the largest producer of asbestos-based products in the United States.' . . . Products of Johns-Manville saw widespread commercial, industrial and consumer use. In particular, its '85 percent magnesium' products were used extensively in shipyards in the years leading up to and during World War II.").

³²³ GST-8011 at 14.

³²⁴ GST-3598 (Homa GAF Trust Claim) at DAVID 00923-26; GST-3603 (Homa Kaiser Trust Claim) at DAVID 01227-28 (third-party affidavit dated Oct. 6, 2009); GST-3608 (Homa Plibrico Trust Claim) at DAVID 01706-08.

³²⁵ GST-3603 (Homa Kaiser Trust Claim) at DAVID 01227-28 (third-party affidavit dated Oct. 6, 2009).

admissible at trial, and would not place Mr. Homa in the “breathing zone” of dust emitted from the relevant products.³²⁶

Garlock also complains that eleven of Mr. Homa’s trust claims are based on exposures at sites where, Garlock contends, “Mr. Homa had testified he was never exposed to asbestos at all, including a site where he alleged, in his tort case against Garlock, that he only drove a truck, as well as a site where he alleged, in his tort case against Garlock, that he only worked as a police officer.”³²⁷ Again, Garlock has mischaracterized the testimony: Mr. Homa did not affirmatively deny exposure at these sites; rather, he testified that he *did not believe* he was exposed at those sites.³²⁸ As the evidence at the Estimation Hearing clearly showed, asbestos victims often are unaware of exposures at particular sites, but are nonetheless entitled to file a claim against an asbestos trust if any other basis is developed, such as the presence of the claimant’s worksite on the trust’s approved site list, or the testimony of other workers that the bankrupt’s products were at the site.³²⁹

Eight of the eleven trust claims were based on the trusts’ approved site lists, which were publicly available and accessible to Garlock, and name several worksites, including the Brooklyn Navy Yard, where Mr. Homa stated in discovery he was exposed to numerous asbestos-containing products.³³⁰ The claim to the Babcock & Wilcox Trust, for example, names more than a dozen other worksites, including the Newport Naval Hospital, where, it states, Mr. Homa worked as an ambulance driver, which is consistent with his testimony.³³¹ In any event, Garlock has admitted that Mr. Homa specifically identified products for which the Babcock & Wilcox trust, as well as the DII (Haliburton) trust, are responsible.³³² Two of the eleven claims, the

³²⁶ Garlock’s defense attorney John Turlik testified that a plaintiff seeking to demonstrate a defendant’s liability, or a defendant seeking to lay off liability on another party, would have to prove that the plaintiff was in the breathing zone of dust emitted by the party’s product. Hr’g Tr. 2380:19-23, Aug. 1, 2013 (Turlik). *See also* Hr’g Tr. 3300:18-3301:6, Aug. 6, 2013 (Magee).

³²⁷ GST-8011 at 15.

³²⁸ *See, e.g.*, GST-3614 (Homa Dep. June 17, 2008) at 75:23-76:1 (“Q. Okay. Do you believe that you were exposed to any form of asbestos while working in the Naval Hospital in Newport? A. No.”); *id.* at 86:19-22 (“Q. Okay. Do you believe that you were exposed to asbestos when you were in Jacksonville? A. No.”); *id.* at 88:10-93:13 (same).

³²⁹ Hr’g Tr. 3709:18-3711:3, Aug. 7, 2013 (Patton).

³³⁰ *See* GST-3591 (Homa AWI Trust Claim) at DAVID 00360; GST-3592 (Homa B&W Trust Claim) at DAVID 00389; GST-3596 (Homa FB Trust Claim) at DAVID 00582; GST-3599 (Homa DII (HAL) Trust Claim) at DAVID 00932; GST-3604 (Homa Keene Trust Claim) at DAVID 01335; GST-3606 (Homa OC Trust Claim) at DAVID 01463; GST-3609 (Homa Raymark Trust Claim) at DAVID 01709-14 ; GST-3593 (Homa Combustion Trust Claim) at DAVID 00412-22.

³³¹ *See* GST-3592 (Homa B&W Trust Claim) at DAVID 00371-402.

³³² *See* GST-8011 at 16.

Plibrico and G-I (GAF) claims, were supported by Mr. Homa's deposition and third-party affidavits that established the presence of the bankrupts' products at Mr. Homa's worksite.³³³ Finally, the claim to the Shook & Fletcher Trust simply states that Mr. Homa worked as Chief Master of Arms (*i.e.* a police officer) at the Norfolk Naval Shipyard, which is perfectly consistent with his deposition testimony.³³⁴

Raymond Beltrami

Mr. Beltrami filed his original complaint against Garlock and numerous other defendants in New York State court on March 18, 2008.³³⁵ The complaint was amended several times to add additional defendants, including Garlock affiliates Fairbanks Morse Pump Company and Fairbanks Morse Engines.³³⁶ Garlock implies that Mr. Beltrami and his attorneys, Belluck & Fox, were obliged to file trust claims before trial, stating that the case was "subject to the same NYC CMO provision requiring filing and disclosure of all Trust claims long before trial" as the Homa case.³³⁷ But there is no evidence that a trial date had even been set in the Beltrami case and therefore no evidence that the NYC CMO provision calling for disclosure of trust claims ninety days before trial ever became operative. In any event, as noted above in the discussion of Mr. Homa's case, the NYC CMO required trust claims to be filed before trial only if the plaintiff affirmatively intended to pursue such a claim, rather than if he merely anticipated that he might do so.

Mr. Beltrami did not specifically identify Garlock gaskets. By contrast, there was extensive product identification for products manufactured by the Fairbanks Morse entities.³³⁸ The Fairbanks Morse entities' liability was Garlock's main focus in settlement: Mr. Belluck testified that Garrison's Chris Drake told him that EnPro wanted to settle the case as a Garlock matter to avoid litigating any successor liability issues concerning EnPro's responsibility for Fairbanks Morse products.³³⁹ The case was settled in 2009 with twenty-one other cases as part of Garlock's matrix deal with Belluck & Fox.³⁴⁰ The pertinent factors considered in the matrix

³³³ See GST-3598 (Homa GAF Trust Claim) at DAVID 00923-26; GST-3608 (Homa Plibrico Trust Claim) at DAVID 01706-08.

³³⁴ See GST-3614 (Homa Dep. June 17, 2008) at 86:7-18.

³³⁵ See ACC-6000 (Beltrami Summons and Verified Complaint, dated Mar. 18, 2008).

³³⁶ See ACC-6001 (Beltrami Seventh Amended Summons and Complaint) at 3.

³³⁷ GST-8011 at 44.

³³⁸ See ACC-733 (January 14, 2009 email) at ACC-EST-0039028; ACC-320 (MEA/Beltrami); GST-1853 (Beltrami Dep. Apr. 15, 2008) at 94.

³³⁹ See Belluck Dep. 333:2-25, Dec. 14, 2012 ("[Mr. Drake's] posture [in the Beltrami case] was that they did not want to settle that case as a Fairbanks-Morris exposure, and they did not want litigation of the successor liability issue as to whether EnPro was responsible for Fairbanks-Morris to be litigated.").

³⁴⁰ See GST-0403 (Belluck settlement correspondence); ACC-320 (MEA/Beltrami).

deal were the victim's age, disease, trade, whether he was exposed to Garlock products directly or as a bystander, product identification, and whether the victim was living or dead, and not case-specific discovery into other exposures.³⁴¹ In its MEA, Garlock admits that "[t]he settlement is favorable to Garlock, particularly when weighed against the dangers of trying cases in New York City."³⁴²

In the Work History Sheet appended to his interrogatories, Mr. Beltrami stated that, at the Brooklyn Navy Yard and on the USS Waller as a gunner's mate, he personally used and was exposed to, handled and/or worked with various types of asbestos-containing equipment, including maintenance equipment, boilers, turbines, pumps, valves, blowers, tanks, chillers, heaters, evaporators, air conditioners, engines, steam lines packing, gaskets, cement and rope. He stated that, as a utility mechanic at the Suffolk County Water Authority, he was exposed to asbestos cement (transite) pipe manufactured by Johns Manville and Certainteed. At Harkness Construction, he was exposed to joint compound and drywall, including products manufactured by "Georgia Pacific, Bondex [and] UGL", and when he worked for the City of Holly Hills. He was exposed to packing, gaskets, pumps, valves and motors.³⁴³

During his deposition, Mr. Beltrami disclosed extensive exposures to asbestos-containing products, including exposure to transite pipe.³⁴⁴ Such pipe contained crocidolite, which Garlock contends is the most dangerous form of asbestos. He testified that the pipe was manufactured by Johns Manville and Certainteed,³⁴⁵ and that he cut the pipe with a power saw, generating large amounts of dust.³⁴⁶ As Mr. Magee testified at trial, this was "excellent" evidence for Garlock.³⁴⁷ Plainly, Mr. Beltrami's disclosures pertaining to non-Garlock asbestos exposures were more than substantial.

³⁴¹ See GST-0403 at GST-EST-0337722.

³⁴² ACC-320 (MEA/Beltrami).

³⁴³ See GST-1862 at GST-EST-0514145-46.

³⁴⁴ GST-1857 at 36:5-45:20 (exposures to pipe), 69:3-80:22 (packing, valves and pumps), 82:24-89:15 (gaskets), 89:20-93:18 (valves).

³⁴⁵ See GST-1853 (Beltrami Dep. Apr. 15, 2008) at 32:1-15 (exposures to joint compound), 38:5-25 (boilers), 39:9-42:18 (flooring), 96:2-22 (packing, gaskets and pumps), 118:7-130:18 (brakes), 172:2-175:5 (asbestos pipe), 192:16-193:11 (identified Certainteed and Manville). GST-1857 at 39:2-3.

³⁴⁶ *Id.* at 201:4-203:1. GST-1857 at 36:5-45:20.

³⁴⁷ Hr'g Tr. 3363:7-14, Aug. 6, 2013 (Magee). ("Q. . . Do you agree with me that one of the most potent disclosures from the standpoint of Garlock's defense that a plaintiff could give is that he personally cut crocidolite-containing — that he personally cut transite pipe? A. If the type of the pipe — the manufacturer of the pipe was known or demonstrated, yes, that would have been excellent evidence for Garlock to have.").

Mr. Beltrami disclosed exposures to asbestos from numerous sources while he was in the U.S. Navy as well, including insulation on equipment in the engine room of the USS Waller, including pipes, boilers, fitting, valves, and motors, coatings on overhead pipes, and insulation cement for boilers.³⁴⁸ Moreover, in the Flynn case, Belluck & Fox already had produced ship records detailing machinery and equipment on the USS Waller, on which Mr. Beltrami served.³⁴⁹ Mr. Beltrami also disclosed exposures to numerous products from home maintenance, repairs and renovations, including joint compound, spackle, flooring, asbestos cement, Kentile floors, brake dust, and sheet rock.³⁵⁰

The David Law Firm filed seventeen trust claims for Mr. Beltrami which, Garlock alleges, were based on exposures not disclosed to Garlock during discovery.³⁵¹ Again, Garlock mischaracterizes the record. The principal basis for each of these claims, including those filed before the case was settled (though after Mr. Beltrami's interrogatory responses were served),³⁵² was Mr. Beltrami's work for the US Navy and on the USS Waller, which was disclosed to Garlock.³⁵³

³⁴⁸ See GST-1857 (Beltrami Dep. May 8, 2008) at 30:11-33:9.

³⁴⁹ See ACC-6409-6591 (Waller ship records).

³⁵⁰ See, e.g., GST-1857 (Beltrami Dep. May 8, 2008) at 46:7-63:15.

³⁵¹ See GST-8011 at 45.

³⁵² Garlock has alleged that the UNR claim was filed on March 18, 2008, before Mr. Beltrami's interrogatory responses were served. As was pointed out during Mr. Cooper's deposition, this is incorrect; the claim form notes that the tort suit was filed on that date, but does not provide the date on which the claim was filed. Cooper Dep. 107:11-109:7, Feb. 1, 2013.

³⁵³ GST-1835 (Beltrami AWI Trust Claim) at DAVID 01736-47; GST-1836 (Beltrami B&W Trust Claim) at DAVID 01748-68; GST-1837 (Beltrami Combustion Engineering Trust Claim) at DAVID 01769-78; GST-1838 (Beltrami NGC Trust Claim) at DAVID 01779-83; GST-1839 (Beltrami OC Trust Claim) at DAVID 01784-805; GST-1840 (Beltrami FB Trust Claim) at DAVID 01806-27; GST-1841 (Beltrami USG Trust Claim) at DAVID 01828-38; GST-1842 (Beltrami Manville Trust Claim) at DAVID 01839-44; GST-1843 (Beltrami Celotex Trust Claim) at DAVID 01845-56; GST-1844 (Beltrami Eagle-Picher Trust Claim) at DAVID 01857-59; GST-1845 (Beltrami DII (HAL) Trust Claim) at DAVID 01860-72; GST-1846 (Beltrami HK Porter Trust Claim) at DAVID 01873-91; GST-1847 (Beltrami DII (HW) Trust Claim) at DAVID 01892-911; GST-1848 (Beltrami Kaiser Trust Claim) at DAVID 01912-29; GST-1849 (Beltrami Keene Trust Claim) at DAVID 01930-31; GST-1850 (Beltrami Plibrico Trust Claim) at DAVID 01932-49; GST-1851 (Beltrami Raymark Trust Claim) at DAVID 01950-51; GST-1852 (Beltrami UNR Trust Claim) at DAVID 01952-54.

Williams Kherkher Claimants

Oscar Torres

Mr. Torres was a 71-year-old living mesothelioma victim. He was diagnosed in April 2009³⁵⁴ and sued Garlock and numerous other defendants in Texas state court on June 18, 2009.³⁵⁵ His occupational exposure occurred when he was working as a pipefitter for Brown & Root at a Union Carbide facility from 1975-77.

Mr. Torres' case was on the fast track, and went to trial in February 2010. Garlock was one of two remaining defendants; the other was Union Carbide, who owned the site at which he worked and supplied the gaskets and insulation to which Mr. Torres was exposed.³⁵⁶

Garlock was successful in having listed on the verdict sheet Owens Corning, Johns-Manville, and Brown & Root (Mr. Torres' employer) along with Garlock and Union Carbide. The jury found that Union Carbide and Garlock were each 45% liable, and that Brown & Root was 10% liable.³⁵⁷ No fault was allocated to Owens Corning and Johns-Manville. Garlock appealed the verdict, and the appeal was pending when the bankruptcy was filed.

Mr. Torres identified Garlock 7705 gaskets (a crocidolite variety) himself, and a former employee of Union Carbide, Richard Weikel, testified that Union Carbide used Garlock crocidolite gaskets during the relevant time period, and that pipefitters used power grinders on the gaskets.³⁵⁸ As Garlock itself acknowledged in its internal Trial Evaluation Form ("TEF") evaluating the case before trial, there was overwhelming evidence that Mr. Torres suffered significant exposure to Garlock 7705 gaskets, which contained crocidolite, which Garlock itself contends is the most deadly form of asbestos. In its TEF, Garlock stated that Mr. Torres:

installed and replaced Garlock 7705 (crocidolite) gaskets in the acid unit at Union Carbide in Brownsville, Texas from 1975-1977. Plaintiff testified to replacing 4-6 Garlock 7705 gaskets, 2-3 days per week for 3 years, though he acknowledged that he did not do so every week. Removing a small or medium sized gasket took approximately 5 minutes; large gaskets took 20 minutes

Plaintiff always used a scraper to remove as much of the gasket as possible but almost always used a hand wire brush to clean the residue off of the flange faces. A coworker testified that he witnessed Plaintiff employ a power grinder to remove gaskets in the acid unit several times. However, he later admitted that he could not

³⁵⁴ ACC-311 (TEF/Torres) at GST-EST-0556239.

³⁵⁵ ACC-6225 (Torres Clerk's Record) at GST-EST-0523254-64.

³⁵⁶ ACC-6225 at GST-EST-0523301-18. *See also* ACC-311.

³⁵⁷ *See* ACC-397 (Judgment) at 8:10-25.

³⁵⁸ ACC-6201 (Weikel Dep.) at 18:5-23, 20:1-21:16.

say for certain what area of the plant he was in when he saw Plaintiff use a grinder. Another coworker did not offer specific testimony about Plaintiff but did testify that pipefitters used power grinders in the acid unit during shutdowns.³⁵⁹

Garlock suggests that Mr. Torres failed to disclose exposure to insulation products, contending that “Mr. Torres throughout his case claimed that the only asbestos-containing products he handled directly were Garlock crocidolite gaskets.”³⁶⁰ And at the Estimation Hearing, Mr. Magee suggested that Mr. Torres was lying: “Mr. Torres didn't speak a whole lot of English, but he knew two words of English for sure and those were ‘Garlock’ and ‘7705,’ 7705 being the Garlock product number for the — for its crocidolite gaskets. He claimed his only asbestos product exposure was to Garlock crocidolite gaskets.”³⁶¹

But neither the name “Garlock” nor the number “7705” require translation. And Mr. Magee grossly misstated the record: Mr. Torres did not claim that his only product exposure was to Garlock gaskets. To the contrary, during discovery and at trial, Mr. Torres and other witnesses disclosed Mr. Torres’ extensive exposures to other asbestos-containing products, including insulation. As Garlock acknowledged before the trial in its own evaluation, “several witnesses ha[d] testified that Plaintiff was exposed to large amounts of dust from asbestos-containing pipe insulation.”³⁶² While the TEF noted that the witnesses had not “linked Plaintiff to a specific brand of insulation,” it also noted that “the case against Union Carbide is strong because they supplied the gaskets and insulation materials.”³⁶³

As shown at the Estimation Hearing, Mr. Torres freely disclosed in discovery that he was continuously exposed to thermal insulation while working as a pipefitter at Union Carbide.³⁶⁴ Mr. Torres’ interrogatory responses, for example, stated that:

Mr. Torres worked with gaskets throughout the plant, including on acid lines. He was continuously exposed to asbestos on a daily basis and additionally *had periods of large exposure during shutdowns and projects where insulation was stripped off large areas*. The asbestos-containing debris was visable (sic) and at times, created clouds of dust.³⁶⁵

Mr. Torres also stated that he:

³⁵⁹ ACC-311(TEF/Torres) at GST-EST-0556238.

³⁶⁰ GST-8011 at 9.

³⁶¹ Hr’g Tr. 3082:15-20, Aug. 5, 2013 (Magee).

³⁶² ACC-311 at GST-EST-0556238.

³⁶³ *Id.*

³⁶⁴ Hr’g Tr. 3350:10-3357:13, Aug. 6, 2013 (Magee).

³⁶⁵ GST-4926 (Seventh Am. Interr. Resp.) at GST-EST-0536290 (emphasis added).

worked around insulators during turnarounds, shutdowns, and general maintenance projects. In areas where Mr. Torres was working, *insulators routinely cut, sawed, fabricated and mitered asbestos-containing pipe insulation. These actions created dust that was thick and heavy and Mr. Torres was working in very close proximity to where insulators were working and creating dust cloud-like conditions.*³⁶⁶

The responses listed a dozen co-workers who “will testify . . . [to the] dusty conditions” created by asbestos insulation.³⁶⁷ Several of those co-workers were deposed, and their video-taped depositions were shown at trial. For example, Mr. Francisco Robledo, a co-worker, testified about the dust created when insulators removed insulation, stating that it was “flying” and dumping down on the pipefitters, including Mr. Torres, working below them.³⁶⁸ He described seeing “multiple particles” floating in the sun when the insulators were working,³⁶⁹ and stated that the entire bodies of those working nearby would be covered in these particles, which would not come off until they showered at home.³⁷⁰ Another co-worker, Mr. Ruben Ruiz, testified that, working near pipefitters such as Mr. Torres, the insulators sawed, hammered, and cut insulation, creating visible dust.³⁷¹ He described dust falling all over the pipefitters as a result of the insulators’ work.³⁷² He also witnessed Mr. Torres removing gaskets with wire brushes and spatulas.³⁷³

Mr. Jesus Valenzeula testified that he and Mr. Torres worked within a few feet of insulators who cut and sawed insulation, causing it to break and fall off in pieces and creating visible dust that fell on them.³⁷⁴ He also testified that he and Mr. Torres changed tubing on boilers,³⁷⁵ and that workers nearby mixed “mud” for the boilers.³⁷⁶ And yet another co-worker, Mr. Antonio Rodriguez, testified that insulators regularly worked above the pipefitters, and that dust and fibers would fall all over the workers below.³⁷⁷

³⁶⁶ *Id.* (emphasis added).

³⁶⁷ *Id.* at GST-EST-0536291-92.

³⁶⁸ *See* GST-4859 (Torres Trial Tr. Mar. 3, 2010) at 220:13-222:8.

³⁶⁹ *Id.* at 226:1-7.

³⁷⁰ *Id.* at 225:11-25.

³⁷¹ GST-4856 (Torres Trial Tr. Feb. 25, 2010) at 12:2-16, 14:16-15:14.

³⁷² *Id.* at 21:25-22:5.

³⁷³ *Id.* at 22:6-14.

³⁷⁴ GST-4857 (Torres Trial Tr. Feb. 26, 2010) at 197:9-198:12.

³⁷⁵ *Id.* at 200:7-11.

³⁷⁶ GST-4856 at 129:20-24.

³⁷⁷ GST-4858 (Torres Trial Tr. Mar. 2, 2010) at 219:18-24, 225:11-17, 226:25-227:19.

At his deposition, which was read in at trial, Mr. Torres corroborated his coworkers' testimony that he routinely worked around insulators, who were about twenty feet away when insulating pipes, which created dust.³⁷⁸ On cross-examination by Garlock's attorney, Mr. Torres testified that it was like a "snowstorm" when insulation was being cut.³⁷⁹ He testified that he worked near insulators two or three days a week for eight hours at a time, and breathed the dust from the insulation.³⁸⁰

Mr. Weikel, a witness for the plaintiff, testified at his deposition to the presence of Kaylo insulation, which was produced by Owens Corning, at the Union Carbide plant, as well as insulation products produced by numerous other bankrupts, including Johns-Manville, Celotex, Carey, and A.P. Green, all of which was used by insulators in the presence of pipefitters such as Mr. Torres.³⁸¹ He testified that he could not recall the name of the manufacturer of the boilers at the site, but his testimony suggested that he likely would recognize the name: "probably in about three or four hours, the name will pop into my head, but right now for some reason I just — I — I cannot remember."³⁸² Neither Garlock's attorney nor any other defendant's attorney suggested any manufacturers' names to him, or asked about Babcock & Wilcox boilers. Portions of Mr. Weikel's video-taped deposition were also played at trial.³⁸³

Moreover, Mr. Torres' own expert provided a lung fiber analysis that showed both amosite and crocidolite fibers were present in Mr. Torres's lungs.³⁸⁴ Although this study was proof of exposure to amosite, it was also proof of exposure to crocidolite, which was particularly damaging to Garlock's defense. Garlock moved, unsuccessfully, to exclude the evidence.³⁸⁵

Garlock suggests that Mr. Torres lied at his deposition when he testified that he did not recognize the name "Babcock Wilcox,"³⁸⁶ because the Chandler firm had filed a claim on Mr. Torres' behalf with the Babcock & Wilcox Trust on July 15, 2009. But Mr. Chandler, the attorney who represented Mr. Torres at his deposition, testified that he himself was unaware at the time of Mr. Torres' deposition that the claim had been filed. He subsequently determined that the Babcock & Wilcox Trust Claim had been filed as a protective measure, because a tolling

³⁷⁸ See GST-4638 (Torres Dep. Vol. I) at 41, 50.

³⁷⁹ GST-4639 (Torres Dep. Vol. II) at 68:9-70:13.

³⁸⁰ GST-4638 (Torres Dep. Vol. I) at 50:7-51:4.

³⁸¹ See, e.g., ACC-6201 (Weikel Dep.) at 193:21-194:11, 195:18-196:18, 197:15-20, 200:14-201:16.

³⁸² *Id.* at 224:22-24.

³⁸³ See GST-4854 (Torres Trial Tr. Feb. 23, 2010) at 191:15-17, 192.

³⁸⁴ See ACC-6203 (Transcript re Garlock's motion in limine, dated Feb. 8, 2010) at GST-EST-0393632-33.

³⁸⁵ *Id.* See also ACC-311 (TEF/Torres) at GST-EST-0556239.

³⁸⁶ GST-4639 (Torres Dep. Vol. II) at 91:5-7.

agreement with the trust was coming to an end, and his firm wanted to ensure that Mr. Torres' rights were protected.³⁸⁷ Mr. Chandler testified:

all that was done there, and unfortunately I didn't even know about it until I was preparing for this deposition, is that our bankruptcy department, out of an abundance of caution, filed and deferred the claim to Babcock & Wilcox so that he would get the protection of the preservation of the statute of limitations on that deadline. So it wasn't a claim. It was a claim that was uploaded and deferred, meaning we provided no other information other than very basic name, social security number, date of birth, identifying information.³⁸⁸

The claim was deferred, and not perfected until sometime after Mr. Torres' death, in September 2011.³⁸⁹

When questioning Mr. Finley at his deposition, Garlock's attorney mischaracterized Mr. Chandler's testimony: "Q. I—I understood Mr. Chandler to say yesterday that there were two types of claims, a legitimate claim and a deferral claim."³⁹⁰ As shown by his testimony above, however, this was misleading — Mr. Chandler had not distinguished between "legitimate" claims and "deferral" claims. Responding to the suggestion that his firm filed illegitimate claims, Mr. Finley responded: "Any file that I claim is legitimate. I have some basis for filing."³⁹¹ Indeed, as was eventually determined, Mr. Phillips was entitled to, and received, payment from the Babcock & Wilcox Trust on the basis that he had mesothelioma and had worked at Union Carbide's Brownsville facility.

There is nothing in the evidence to suggest that, at the time he was deposed, Mr. Torres himself was aware that any submission to the Babcock & Wilcox Trust had been made, or that he knew whether there were Babcock & Wilcox boilers at Union Carbide. As shown at the Estimation Hearing, mesothelioma victims often are not aware of, or cannot recall, the brand names of asbestos-containing products to which they were exposed decades earlier.

In any event, Garlock's counsel conceded at the Estimation Hearing that it does not contend that it was harmed if a plaintiff filed trust claims after the tort suit was settled. Rather, he stated, Garlock contended only that the plaintiff was obligated to disclose evidence of exposure: "We're not complaining about delaying the trust claim. What the plaintiff is obligated to do is disclose the product exposures that support the trust claim."³⁹² In Mr. Torres' case, there was no product exposure evidence to be disclosed; the Babcock & Wilcox Trust Claim form

³⁸⁷ See Chandler Dep. 46:11-18, 51:7-16, Jan. 11, 2013.

³⁸⁸ Chandler Dep. 46:19-47:5, Jan. 11, 2013.

³⁸⁹ See *id.* at 67:1-19, 68:5-9.

³⁹⁰ Finley Dep. 113:23-25, Apr. 25, 2013 (Finley).

³⁹¹ Finley Dep. 114:5-6, Apr. 25, 2013 (Finley).

³⁹² Hr'g Tr. 73:1- 4, July 22, 2013 (Cassada).

simply stated that Mr. Torres' worksite, Union Carbide in Brownsville, was on Babcock & Wilcox's approved site list.³⁹³

After the trial, and after Garlock filed for bankruptcy, Mr. Torres filed trust claims with the DII (Haliburton) and Owens Corning Trusts. As noted above, Owens Corning Kaylo had been identified during discovery, and, according to Mr. Chandler, Garlock itself had presented some documents at trial related to Kaylo.³⁹⁴ Garlock admits that the court in the Torres trial found there was sufficient evidence to place Owens Corning on the verdict sheet.³⁹⁵ Thus, Garlock cannot complain about lack of disclosure regarding Owens Corning.

Nonetheless, Garlock now contends that, at trial, "Mr. Torres' attorneys vigorously denied [Mr. Torres] was exposed to Owens Corning insulation,"³⁹⁶ which, Garlock suggests, was inconsistent with Mr. Torres filing a claim with the Owens Corning Trust after the trial concluded.³⁹⁷

Garlock mischaracterizes the Torres trial record. Mr. Torres' attorney, Mr. Chandler, did not "vigorously deny" that Mr. Torres was exposed to Owens Corning's product, Kaylo. Rather, in his closing argument, he pointed to the paucity of evidence, and the fact that Owens Corning had stopped manufacturing their asbestos insulation products in the early 1970s:

Owens Corning and Johns-Manville, companies who you've heard very little in this case, for whom you saw very few documents, for whom we don't even know if that was the thermal insulation that exposed Mr. Torres, quit making products that contained asbestos in 1972. And they [Garlock] will argue to you it's their [Owens Corning and Johns Manville's] fault. They [Garlock] made asbestos products until the 21st century, but they're fine.

The answer to the marketing defect question as to Garlock is "yes"; as to Johns-Manville and Owens Corning is "no" because they quit manufacturing before Mr. Torres ever stepped foot on the plant. How can they be held responsible when they didn't deliver for three years, at least, before Mr. Torres got there?³⁹⁸

Mr. Chandler owed his client an ethical duty of zealous representation, and was obliged to ensure that liability was not laid off on absent parties when the evidence did not satisfy the legal standard at trial. That he was successful in persuading the jury to assign no fault to Owens

³⁹³ See GST-4927 (Torres B&W Trust Claim) at WK 0005.

³⁹⁴ See Chandler Dep. 71:6-19, 73:3-16, Jan. 11, 2013.

³⁹⁵ See GST-8011 at 9-10.

³⁹⁶ *Id.* at 10.

³⁹⁷ See *id.*

³⁹⁸ GST-4860 (Torres Trial Tr. Mar. 4, 2010) at 56:15-22, 58:13-18. See also Chandler Dep. 37:3-38:14 (discussing same).

Corning is not inconsistent with the trust claim asserted against the Owens Corning Trust, which has an entirely different standard. Nor does the trust claim demonstrate that Mr. Torres failed to disclose any evidence of exposure to Owens Corning's products. The Owens Corning Trust, like the Babcock and Wilcox trust, has designated the Union Carbide plant in Brownsville an approved site, and Mr. Torres' claim was based solely on his having worked at that site.³⁹⁹

John Phillips

This Court is already familiar with the Phillips case, which is the subject of an adversary proceeding in this bankruptcy.⁴⁰⁰ John Phillips was a 59-year-old living mesothelioma victim. He was exposed to crocidolite asbestos from Garlock gaskets when he was a high school student, and worked from 1966 to 1968 at Triplex in Houston, Texas during three summers, on two Christmas breaks, and for twenty hours a week in his last semester at high school.⁴⁰¹ He and his wife filed suit against Garlock and Triplex, Inc. ("**Triplex**"), in the District Court of Harris County, Texas on July 8, 2008. In March, 2009, Garlock settled the Phillips case on the day before it was set for trial, for \$2.5 million.⁴⁰²

Mr. Phillips testified at his deposition that, while working at Triplex, he spent 90% of his day cutting gaskets, 60% of which was spent cutting gaskets from Garlock asbestos sheet gasket material, 30% from Johns-Manville asbestos sheet gasket material, and 10% from non-asbestos sheet gasket material.⁴⁰³ According to Mr. Phillips, 75% of the Garlock gaskets were cut from dark gray, "7705" crocidolite material, the remaining 25% from white chrysotile sheet gasket material.⁴⁰⁴ Mr. James Welborn testified that he worked in the Triplex gasket shop at the same time as Mr. Phillips and that Mr. Phillips cut Garlock "7705" gaskets "probably right at" three-fourths of the time he spent working at Triplex.⁴⁰⁵ Mr. Phillips testified that he was not exposed to asbestos products other than the gaskets to which he was exposed at Triplex.⁴⁰⁶ Numerous other fact

³⁹⁹ See GST-4929 (Torres Owens Corning Trust Claim). The claim on the DII (Halliburton) Trust was also an approved site list claim, based solely on Mr. Torres' work at the Union Carbide plant. The final claim was a proof of claim in the AMF Incorporated bankruptcy. See GST-4930. AMF was a contractor, not an asbestos manufacturer. Its bankruptcy was converted to Chapter 7 and Mr. Torres never received any payment from that estate. See Chandler Dep. at 79:22-83:14, Jan. 11, 2013.

⁴⁰⁰ Complaint, *Garlock Sealing Technologies LLC v. Troy D. Chandler et. al*, No. 12-03137 (Bankr. W.D.N.C. June 4, 2012) [Dkt. No. 1].

⁴⁰¹ See GST-3898 (Phillips Dep.) at 25:2-27:25.

⁴⁰² See ACC-332 (MEA/Phillips) at GST-EST-0556266.

⁴⁰³ See ACC-308 (TEF/Phillips); GST-3898 (Phillips Dep.) at 25, 38:13-39:8.

⁴⁰⁴ See GST-3898 (Phillips Dep.) at 47:19-23, 135:4-136:18.

⁴⁰⁵ See ACC-6106 (Welborn Dep.) at GST-EST-0155663.

⁴⁰⁶ See GST-3898 (Phillips Dep.) at 92:2-96:25.

witnesses were deposed; there was no evidence that Mr. Phillips was exposed to any other asbestos-containing products.

Garlock acknowledged in its MEA, the internal memorandum approving the settlement, a fiber burden analysis “showed heavy amounts of crocidolite in his lung. There was no finding of any other type of asbestos fiber in his lungs.”⁴⁰⁷ Garlock also acknowledged in an internal case evaluation that experts for both the plaintiff and the defense “confirm a high crocidolite fiber burden” in Mr. Phillips’ lungs, and thus, Garlock’s “medical defenses [were] extremely limited.”⁴⁰⁸ Garlock further acknowledged in its MEA, “the only established exposure to crocidolite was from [Garlock] gaskets.”⁴⁰⁹

While Garlock suspected that Mr. Phillips was exposed to other crocidolite-containing products at the Triplex facility, there was no evidence of such exposure. There was no evidence that Mr. Phillips worked around or cut any other asbestos-containing cement pipe, or that any asbestos-containing cement pipe was on Triplex’s premises during the years that Mr. Phillips worked there. Ms. Bernice Elder, who worked for Triplex for many years, testified at her deposition that she had “never seen cement pipe” on Triplex’s premises.⁴¹⁰ “[W]ith no other alternative exposure sources,” Garlock’s own expert acknowledged that “Garlock gaskets were a contributing factor.”⁴¹¹

In its internal case evaluation, authored by attorneys at Schachter Harris,⁴¹² Garlock characterized the Phillips case as “likely one of the worst trial set cases against Garlock this year,” noting Mr. Phillips’ “significant actual damages including excessive lost wages and above average medical expenses for medical treatments including an extra-pleural pneumonectomy.”⁴¹³ And in its lengthy MEA, Garlock acknowledged that the case “represented the most unique factual situation,” and that its trial risk was high. Among other things, the MEA noted that “[o]ne of the major concerns in this trial was the ability to keep Garlock’s percentage of liability below 50%, to avoid having to pay the entire verdict. This was going to be a difficult undertaking with no alternate exposure and both Triplex and Plaintiff pointing to Garlock.”⁴¹⁴ Garlock was also aware, moreover, that the Phillips “intend[ed] to release Triplex before the case goes to the jury,” and intended to seek high punitive damages against Garlock.⁴¹⁵ Garlock had conducted a “mock trial in Houston to explore the jury’s responses to certain themes,” and found

⁴⁰⁷ ACC-332 (MEA/Phillips) at GST-EST-0556265.

⁴⁰⁸ ACC-308 (TEF/Phillips).

⁴⁰⁹ ACC-332 (MEA/Phillips) at GST-EST-0556266.

⁴¹⁰ ACC-6093 (Elder Dep. Feb. 5, 2009) at 109:16-110:3.

⁴¹¹ ACC-332 (MEA/Phillips) at GST-EST-0556266.

⁴¹² See Hr’g Tr. 3342:21-25, Aug. 6, 2013 (Magee).

⁴¹³ ACC-308 (TEF/Phillips).

⁴¹⁴ ACC-332 (MEA/Phillips) at GST-EST-0556265-66.

⁴¹⁵ ACC-308 (TEF/Phillips) at GST-EST-0556232.

that, even in the absence of “emotional testimony from the family . . . the jury verdict that most jurors were comfortable in awarding was the 5-8 Million range.”⁴¹⁶

Garlock contends that before the settlement, “Mr. Phillips’ attorneys filed a ballot for him in the ASARCO bankruptcy, indicating, among other things, that he had exposure for which CAPCO, an asbestos cement pipe manufacturer, was responsible.”⁴¹⁷ At the estimation hearing, Mr. Magee complained that the ASARCO ballot was not disclosed to Garlock before the settlement.⁴¹⁸ But Garlock did not request disclosure of ballots in the Phillips case, or in any other case.⁴¹⁹ Moreover, the ballot does not indicate exposure to CAPCO products. The uncontroverted evidence shows that: CAPCO was a subsidiary and co-debtor of ASARCO; that LAQ, another ASARCO subsidiary and co-debtor, was an asbestos fiber supplier to Garlock; and that a claimant with a reasonable belief he was exposed to LAQ fibers contained in Garlock gaskets could cast a ballot in the bankruptcies of all three debtors based on LAQ exposures through Garlock products and alter ego theories as to ASARCO and CAPCO.⁴²⁰ Uncontroverted testimony also shows that the ballot filed on behalf of Mr. Phillips in the ASARCO bankruptcy was based on his potential exposure to fibers that were supplied to Garlock by LAQ.⁴²¹ And at the Estimation Hearing, Mr. Magee did not dispute that a ballot in the ASARCO bankruptcy could be submitted for CAPCO based on exposures to LAQ fibers.⁴²² The subsequent trust claim to the ASARCO trust was also based on LAQ having supplied fibers to Garlock. As Mr.

⁴¹⁶ ACC-332 (MEA/Phillips) at GST-EST-0556266.

⁴¹⁷ GST-8011 at 21.

⁴¹⁸ See Hr’g Tr. at 3081:13-15, Aug. 5, 2013 (Magee).

⁴¹⁹ See Harris Dep. 186:1-187:17, May 6, 2013; Chandler Dep. 94:2-95:18, Apr. 24, 2013.

⁴²⁰ See Harris Dep. at 182:2-24, May 6, 2013. See also ACC-458 (ASARCO Disclosure Statement) at 1, n.1; ACC-801 (2009 ASARCO Plan Glossary) at 7 (definition ¶ 43) (defining “Asbestos Personal Injury Claim” to include, *inter alia*, any “Claim . . . alleged or asserted against ASARCO or any other Debtor [including CAPCO] directly on account of any Alter Ego Theory”); GST-1512 (ASARCO Plan Glossary) at 6-7 (definition 44) (same); ACC-801 at 3 (definition ¶ 14) (defining Alter Ego theory as “theories asserting that a Debtor [such as CAPCO] should be held liable for the Claims and Demands against one or more other Debtors [such as LAQ] on the ground that it was their alter ego”); GST-1512 at 2-3 (definition ¶ 11) (same).

⁴²¹ See Chandler Dep. 53:25-54:13, 82:18-83:8, Apr. 24, 2013. See also Finley Dep. 139:8-17, Apr. 25, 2013.

⁴²² See Hr’g Tr. 3349:6-16, Aug. 6, 2013 (Magee) (“Q. So will you agree with me that if Mr. Phillips had a good faith basis to allege that he had contact with chrysotile fiber through a Garlock gasket and he had a reasonable belief that the LAQ fiber -- that the fiber in those chrysotile gaskets of Garlock came from LAQ, he was entitled to vote; and he was entitled to vote not only as to LAQ but also as to CAPCO? A. Yeah. I don't dispute that. I think there's some language in the actual ballots that may make that very ambiguous, but I don't dispute that there was a right to do that.”).

Chandler noted, the ASARCO trust allows trust claims if the claimant used Garlock gaskets during a specified period of time, including the time during which Mr. Phillips was exposed.⁴²³

Garlock also contends that, after the settlement, fourteen trust claims were submitted on behalf of Mr. Phillips “for which exposures were never identified,” and that “[e]xposure to any of these products was not consistent in any way with the exposure story Mr. Phillips told Garlock in the tort system.”⁴²⁴ But Garlock fails to mention that of these fourteen trust claims none had any exposure or product identification evidence attached.⁴²⁵ They were placeholder submissions that provided no exposure evidence whatsoever, but merely identified Mr. Phillips and gave his diagnosis.

The trust distribution procedures (“**TDP**”) of asbestos trusts typically provide that claimants may file such placeholders and defer having them processed as claims for a period of time to satisfy the limitations period if they are not already time-barred. The few trusts that do not have formal deferral procedures allow deferral informally — they simply do not accept claims submitted without information satisfying their exposure criteria.⁴²⁶ TDP also commonly provide that claims may be withdrawn at any time upon written notice.⁴²⁷ Mr. Phillips’ attorneys, Mr. Chandler and Mr. Finley, testified that it was their firms’ practice to file trust claims and defer them if necessary in order to preserve them before the limitations period expired.⁴²⁸ Garlock fails to mention that none of the Phillips trust claims it complains of was ever perfected by the submission of any exposure evidence whatsoever. Instead they were deferred and, ultimately, withdrawn.⁴²⁹

⁴²³ See Chandler Dep. at 82:18-83:8, Apr. 24, 2013. See also LAQ Claims Valuation Framework Schedule A, ASARCO Trust, available at http://www.asarcotrust.com/Files/20120822_ASARCO_LAQ_ScheduleA.pdf (last visited Oct. 23, 2013).

⁴²⁴ GST-8011 at 21.

⁴²⁵ See GST-7056 (Phillips Trust Claims).

⁴²⁶ See, e.g., ACC 730 (Blandford Eagle Picher Trust Claim); ACC 731 (Blandford Eagle Picher Trust Claim with May 6, 2003 letter deeming Blandford’s initial submission (ACC-730) deficient at GST-EST-0166347).

⁴²⁷ See, e.g., Amended and Restated Armstrong World Industries, Inc. Asbestos Personal Injury Settlement Trust Distribution Procedures § 6.3, available at <http://www.armstrongworldasbestostrust.com/files/Conformed%20Copy%20of%20AWI%20TDP%20as%20of%20March%2020%202013.pdf> (last visited Oct. 28, 2013); The Babcock & Wilcox Company Asbestos Personal Injury Settlement Trust Distribution Procedures at § 6.3, available at <http://www.bwasbestostrust.com/files/BWTrustDistributionProcedures.pdf> (last visited Oct. 28, 2013).

⁴²⁸ See Chandler Dep. 57:10-58:6, Apr. 24, 2013; Finley Dep. 85:10-21, Apr. 25, 2013.

⁴²⁹ See Strange Dep. 16:6-12, Apr. 25, 2013. See also, e.g., GST-7056 at [pdf 187], [pdf 214]. See also Second Amended Complaint ¶ 97, *Garlock Sealing Technologies, LLC v. Chandler*, No. 12-AP-03137 (Bankr. W.D.N.C. July 19, 2013) [Dkt. No. 145] (“Defendants withdrew thirteen of the Phillips Trust Claims in late February 2012 and one in June 2013.”).

Garlock does not contend that there is any witness or contemporaneous document that makes out any exposures not disclosed in the Phillips case. Instead, Garlock rests on its wrong interpretation of ballots and trust procedures.

The Shein Law Center Claimants

Bernard Massinger

Mr. Massinger filed suit against Garlock and Fairbanks Morse Engine in 2007 in Philadelphia County.⁴³⁰ Mr. Massinger died October 11, 2009,⁴³¹ at age 53, leaving behind a wife and dependent children. Garlock settled with his estate in December 2009 during the first phase (*i.e.* causation / damages phase)⁴³² of the trial of the case, as part of a group settlement of eleven cases, which were all of the Shein Law Center's 2010 trial-listed cases.⁴³³ Garlock's internal memorandum approving the settlement notes that the entire group of cases settled for a total of \$3,000,000.⁴³⁴

In his interrogatory responses, Mr. Massinger stated that as a child he was exposed to asbestos dust on his father's clothes when he came home from work as a welder at Sun Shipbuilding and Drydock. He stated that he also "may have been exposed" to insulation products while working as an electrical power production technician for the U.S. Air Force.⁴³⁵

David Marley, who worked with Bernard Massinger's father, Cy Massinger, at Sun Shipbuilding, identified both Garlock gaskets and Fairbanks Morse engines in his deposition.⁴³⁶ He identified by name numerous ships on which they worked.⁴³⁷ He also identified the manufacturers of several of the products, including several bankrupts: Johns-Manville, Babcock and Wilcox, Flexitallic, Combustion Engineering, Pacor, and Worthington pumps.⁴³⁸

Mr. Marley testified extensively that he and Cy Massinger were regularly exposed to dust from numerous asbestos-containing products on the ships, including turbines, pumps, gaskets,

⁴³⁰ See ACC-318 (TEF/Massinger); ACC-6047 (Massinger Civil Cover Sheet).

⁴³¹ See ACC-6048 (Massinger Death Certificate) at GST-EST-0514460.

⁴³² See Shein Dep. 28:5-19, Jan. 16, 2013 (noting reverse bifurcation prior to 2012).

⁴³³ See ACC-330 (MEA/Massinger).

⁴³⁴ See *id.*

⁴³⁵ See GST-3641 (Massinger Interrogatory Responses) at GST-EST-0179110.

⁴³⁶ See ACC-6042 (Marley Dep. Oct. 6, 2009 (p.m.)) at 38:5-17, 77:20-24; ACC 6043 (Marley Dep. Oct. 6, 2009 (a.m.)) at 118:12-25, 122:18-24, 128:24-129:5; ACC-6044 (Marley Dep. Oct. 7, 2009) at 252:13-22.

⁴³⁷ See ACC-6043 at 31:6-32:22, 34:22-25.

⁴³⁸ See ACC-6042 18:11-14, 20:11-21; ACC-6043 at 102:2-11, 109:22-110:4, 118:12-25. See also ACC-6044 at 359:16-19, 397:18-24.

packing, pipe covering, blankets, cement, insulation, boilers, asbestos mud and block.⁴³⁹ He described Cy Massinger participating in “snowball” fights in the engine room, in which asbestos “mud” and cement was thrown.⁴⁴⁰ He also testified that Cy Massinger was present when workers from Philadelphia Asbestos were sawing block and pipe insulation and it looked like it was snowing.⁴⁴¹ In addition, he testified that Philadelphia Asbestos workers mixed bags of raw asbestos, to which Cy Massinger was exposed.⁴⁴²

Garlock claims that, at his deposition, Bernard Massinger “denied he was ever directly exposed to asbestos, including during his Air Force service from 1978 to 1980 at the Air Force bases in Lackland, Texas, and Dover, Delaware.”⁴⁴³ This is a mischaracterization of his testimony. Mr. Massinger did not deny that he was exposed to asbestos in the Air Force. Rather, he testified:

I may have worked around it, but it was never, you know, do not enter this room, asbestos inside, never anything like that. Like I said, the military was really good as far as precautions.⁴⁴⁴

And, as noted above, his interrogatories also stated that he “may have been exposed” to insulation in the Air Force.

The Early, Lucarelli firm and the Venable firm filed twelve trust claims on behalf of Mr. Massinger’s estate after the case was settled with Garlock.⁴⁴⁵ Garlock admits that Mr. Massinger disclosed exposures to the products of five of the trusts: Babcock & Wilcox, Combustion Engineering, Federal Mogul (Flexitallic), Manville, and Pacor.⁴⁴⁶ But Garlock overlooks that exposure to DII Haliburton products was also disclosed, by Mr. Marley’s deposition testimony identifying Worthington pumps.⁴⁴⁷

Garlock asserts that seven of the trust claims were based on exposures that were not disclosed during discovery.⁴⁴⁸ Four of those claims, to the Eagle-Picher, DII (Halliburton),

⁴³⁹ See, e.g., ACC-6042 (Marley Dep. Oct. 6, 2009 (p.m.)) at 17:4-6, 38:5-22, 44:3-45:21, 48:9-23, 75:9-11; ACC-6043 (Marley Dep. Oct. 6, 2009 (a.m.)) at 57:7- 61:12, 64:4-65:4, 66:13-67:6, 69:6-11, 71:12-21, 73:3-75:19, 78:8-21, 96:2-100:16.

⁴⁴⁰ See ACC-6044 (Marley Dep. Oct. 7, 2009) at 417:5-25.

⁴⁴¹ See ACC-6044 (Marley Dep. Oct. 7, 2009) at 417:17-418:12.

⁴⁴² See *id.* at 419:17-420:7, 424:18-425:25.

⁴⁴³ GST-8011 at 18.

⁴⁴⁴ GST-3673 (Massinger Dep.) at 27:18-23.

⁴⁴⁵ See GST-8011 at 20.

⁴⁴⁶ See *id.*

⁴⁴⁷ See ACC-6042 (Marley Dep. Oct. 6, 2009) at 39:11-13.

⁴⁴⁸ See GST-8011 at 19-20.

Owens Corning, and United States Gypsum Trusts, were approved site-list claims based solely on Cy Massinger's having worked at Sun Shipbuilding, from which he brought home asbestos on his clothing and thus exposed his son.⁴⁴⁹ The Raybestos Trust Claim also cites Cy Massinger's work at Sun Shipbuilding, and attaches excerpts from Bernard Massinger's interrogatory responses and deposition in the tort suit.⁴⁵⁰ There is no exposure information in these claims that was not disclosed to Garlock.

The remaining two claims, to the Owens Corning / Fibreboard ("**Fibreboard**") and Shook & Fletcher Trusts, rest on Mr. Massinger's having been stationed at Shephard Air Force Base and Dover Air Force Base, respectively, while in the U.S. Air Force.⁴⁵¹ (Shephard Air Force Base is on the approved site list of the sites.

Both of the claims were accompanied by an affidavit from Mr. Massinger stating that he had been exposed to asbestos at those sites while working in the vicinity of tradesmen who were using asbestos containing products, but does not identify any specific products. Garlock contends that the affidavit was "contradicted" by Mr. Massinger at his deposition the previous year.⁴⁵² However, as noted above, Mr. Massinger had testified that he "may have worked around" asbestos while in the Air Force. There is no evidence in the record regarding what further investigation Mr. Massinger or his attorneys conducted after the deposition. Garlock notes that Mr. Massinger was deposed again, shortly after the affidavit was executed, but that second deposition was very short, and its stated purpose was solely to memorialize Mr. Massinger's medical condition,⁴⁵³ which was rapidly deteriorating: at that point, he had lost sixty pounds and required the use of a wheelchair.⁴⁵⁴ He was not asked any questions about asbestos exposures in the Air Force.

Finally, Garlock notes that before the trial and settlement, claims were asserted on Mr. Massinger's behalf against the United States Gypsum ("**USG**") and Fibreboard trusts, but were withdrawn and reasserted after the settlement.⁴⁵⁵ Garlock contends that "[t]he exposures evidenced by the USG and Fibreboard Trust claims were never disclosed to Garlock."⁴⁵⁶ The

⁴⁴⁹ See GST-3684 (Massinger Eagle-Picher Trust Claim); GST-3683 (Massinger DII (HAL) Trust Claim); GST-3688 (Massinger Owens Corning Trust Claim); GST-3692 (Massinger USG Trust Claim).

⁴⁵⁰ See GST-3690 (Massinger Raybestos Trust Claim).

⁴⁵¹ See GST-3686 (Massinger Fibreboard Trust Claim); GST-3691 (Massinger Shook & Fletcher Trust Claim).

⁴⁵² See GST-8011 at 18.

⁴⁵³ See GST-8672 (Massinger Dep. June 5, 2009) at 8:12-15. ("The purpose of the deposition is just to talk about what's happened to you medically from July 2 of 2008 to today, June 5, 2009.")

⁴⁵⁴ See GST-3672 (Massinger Dep. June 5, 2009) at 15:15-18:2.

⁴⁵⁵ See GST-8011 at 19.

⁴⁵⁶ *Id.*

USG trust claim was an approved site-list claim based on Mr. Massinger's father's having worked at Sun Shipbuilding, and was accompanied by an affidavit of Mr. Massinger stating that he was exposed to asbestos on his father's clothing, consistent with his testimony in the tort suit.⁴⁵⁷ The USG trust claim provided no other exposure evidence that was not disclosed to Garlock in the tort suit.

The Fibreboard Trust Claim, filed by the Early firm on Mr. Massinger's behalf, was based on Mr. Massinger's having worked at Dover Air Force Base, which is on that trust's approved site list. The claim was accompanied by Mr. Massinger's affidavit attesting that he was exposed to asbestos as a bystander at that site. Mr. Shein of the Shein firm, which represented Mr. Massinger in the tort suit, testified that his firm did not provide the affidavit to Garlock during the tort suit because it was not aware of the claim and did not have it at that time.⁴⁵⁸ In any event, the affidavit does not identify any particular products at Dover Air Force base and, as Mr. Shein pointed out in his deposition, Mr. Massinger's interrogatory responses clearly indicated his potential exposures at that site.⁴⁵⁹

John Brennan

Mr. Brennan was a deceased mesothelioma victim who had been exposed to asbestos while working for the U.S. Coast Guard from 1961 through 1984.⁴⁶⁰ He sued Garlock and other defendants in the Court of Common Pleas in Philadelphia County in July 2008, and died on September 13, 2008.⁴⁶¹ The suit was prosecuted by his wife as executor, and was set for trial in early 2010. It was settled with the Massinger case and the Shein firm's other 2010 trial-listed cases in December 2009, during Phase one of the trial in the Massinger case.⁴⁶² Garlock gaskets were identified by a co-worker as one of the many asbestos-containing products to which Mr. Brennan was exposed.⁴⁶³

It does not appear that Mr. Brennan was deposed. However, the record shows that massive exposures to non-Garlock asbestos-containing products, including insulation, were disclosed in discovery. In her interrogatory responses, Mrs. Brennan stated that during his work with the Coast Guard, Mr. Brennan:

⁴⁵⁷ See GST-3692 (Massinger USG Trust Claim) at SHEIN 01435.

⁴⁵⁸ See Shein Dep. at 150:1-17, Jan. 16, 2013.

⁴⁵⁹ See *id.* at 158:15-23.

⁴⁶⁰ See GST-1988 (Plaintiffs' Answers to Asbestos Claims Facility Defendants' General Interrogatories – Sets I and II, dated Sept. 26, 2009) at SHEIN 01276.

⁴⁶¹ See *id.* at SHEIN 01312.

⁴⁶² See ACC-322 (MEA/Brennan).

⁴⁶³ See, e.g., GST-1942 (Hall Dep. Dec. 3, 2009) at 177.

worked aboard numerous ships in engine and machinery spaces, as well as at various land-based Coast Guard facilities. He frequently and regularly installed and replaced asbestos gaskets and packing on pumps, valves and other equipment. *He also worked in very close proximity to other tradesmen who were installing, repairing and removing various asbestos-containing products. Additionally, decedent was stationed on ships during overhauls causing him further exposure to asbestos-containing products. His working environment was often filled with airborne asbestos dust and fiber.*⁴⁶⁴

The interrogatory responses in the Brennan case also state that the “[d]ecedent served aboard ships including, but not limited to, the Owasco, Zinnia, Dallas, Eagle, Steadfast, Red Oak.”⁴⁶⁵

Bobby Hall, who served on the Owasco with Mr. Brennan, was deposed in the suit, and his testimony demonstrates that Mr. Brennan suffered massive exposures to asbestos insulation and other products. He testified that Mr. Brennan stood watch in the engine room,⁴⁶⁶ assisted with repairing and maintaining equipment,⁴⁶⁷ and was exposed to asbestos from turbines, pumps, valves, boilers, as well as insulation and gaskets for that equipment.⁴⁶⁸ Hot water and steam lines running throughout the ship, including in the berthing area, were covered in thermal insulation, and generated lots of dust to which Brennan was exposed.⁴⁶⁹

After the suit was settled, the Shein firm filed fourteen trust claims on behalf of Mr. Brennan’s estate. Each of the claims was based on Mr. Brennan’s having worked on the Owasco or elsewhere while in the Coast Guard.⁴⁷⁰ The Celotex claim attaches an affidavit by Mr. Hall attesting to the presence on the Owasco of products for which the Celotex trust was responsible;⁴⁷¹ the other claims had no exposure documentation attached.

Mr. Turlik testified that the Brennan case was resolved with no bankrupt entities having been identified because Garlock decided not to engage in a costly work-up process.⁴⁷² Mr. Turlik also stated that if Garlock had known the specific manufacturers against whose

⁴⁶⁴ See GST-1988 (Plaintiffs’ Answers to Interrogatories – Sets I and II, dated Sept. 26, 2009) at SHEIN 01306 (emphasis added).

⁴⁶⁵ See *id.*

⁴⁶⁶ GST-1942 at 33:14-19.

⁴⁶⁷ *Id.* at 34:25-35:5.

⁴⁶⁸ *Id.* at 38:25-43:14, 52:16-56:24, 60:3-16, 74:4-24.

⁴⁶⁹ *Id.* at 48:5-49:25, 124:14-125:7, 217:17-218:5, 232:7-23.

⁴⁷⁰ See GST-8011 at 39 (listing claims).

⁴⁷¹ See GST-1978 (Brennan Celotex Trust Claim) at SHEIN 00128. The claim form submitted to the DII (Halliburton) Trust is not in the record.

⁴⁷² Hr’g Tr. 2301:20-2303:5, Aug. 1, 2013 (Turlik).

predecessor trusts the Brennan estate subsequently filed claims, the settlement value of the case would have been lower. But, as shown above, discovery included disclosure of massive exposures to insulation and other products. The identities of the manufacturers would not have affected Garlock's trial risk. Under Pennsylvania law applicable in the Brennan case, only named defendants can be apportioned a share of the verdict; no bankrupt entities can be allocated responsibility.⁴⁷³ A defendant can introduce evidence of exposure to other products in support of a *de minimis*, or "low dose" causation defense, but the manufacturers of the other products is irrelevant to that defense.

Garlock contends that the Shein firm also submitted ballots in five bankruptcies on behalf of Mr. Brennan before the suit against Garlock was settled, based on undisclosed exposures. However, as discussed in the Committee's Post-Hearing Brief, ballots are not evidence of exposure.⁴⁷⁴

Vincent Golini

Mr. Golini filed suit against Garlock and 30 other defendants, including Fairbanks Morse Pump Co., in June, 2009 in the Court of Common Pleas for Philadelphia County.⁴⁷⁵ Mr. Golini was exposed to numerous asbestos products while working at the Philadelphia Naval Shipyard as a laborer and a pipefitter from 1967 to 1972.⁴⁷⁶ Garlock settled his claim against both Garlock and Fairbanks Morse for \$250,000 in December 2009 as part of the group settlement of the Shein 2010 trial-listed cases, which was entered into during Phase I of the Massinger trial.⁴⁷⁷

In a post-settlement email to Mr. Shein regarding the settlement, Mr. Turlik asked that Mr. Shein provide product identification evidence for Garlock gaskets for a number of the plaintiffs involved, noting that the cases had been settled without discovery. He did not ask for

⁴⁷³ See Shein Dep. 183:3-184:22, Jan. 16, 2013. See also *Kemper Nat'l P&C Cos. v. Smith*, 615 A.2d 372, 379-80 (Pa. Super. Ct. 1992) (only named defendants could be placed on the verdict sheet and be apportioned liability); *Ball v. Johns-Manville Corp.*, 625 A.2d 650, 659-61 (Pa. Super. Ct. 1993), *abrogated on other grounds*, *Baker v. ACandS*, 755 A.2d 664, 660 (Pa. 2000) (bankrupt entities could not be placed on the verdict sheet because any apportionment of liability to them was precluded by the automatic stay provisions of the Bankruptcy Code). Even under the Fair Share Act, which applies to cases involving claims that accrued after June 28, 2011, only non-parties that have *settled* with the plaintiff can be apportioned liability "upon appropriate requests and proofs." 42 PA. CONS. STAT. ANN. § 7102(a.2) (West 2013). Non-parties that have not yet settled cannot be apportioned liability.

⁴⁷⁴ See ACC Post-Hearing Br. at Part I.C(1)(b)(iii).

⁴⁷⁵ See ACC-6035 (Complaint, dated June 12, 2009).

⁴⁷⁶ See GST-2847 (Answers to Interrogatories, dated July 29, 2009) at GST-EST-0517915.

⁴⁷⁷ See ACC-328 (MEA/Golini).

product identification or exposure evidence for any other manufacturer, as to Golini or any other plaintiff.⁴⁷⁸

Discovery disclosed extensive exposure to numerous asbestos-containing products, including insulation. In his answers to interrogatories, Mr. Golini stated that while working at the Philadelphia Naval Shipyard as a laborer, he “frequently and regularly worked with asbestos-containing grinding wheels. Additionally, plaintiff worked in enclosed areas in very close proximity to other tradesmen who were installing, repairing and removing asbestos-containing products.”⁴⁷⁹ He also stated that, while working as an apprentice pipefitter, he “frequently and regularly installed, repaired and removed asbestos-containing products. He also worked on equipment which contained asbestos component parts. Additionally, he worked in enclosed areas in very close proximity to other tradesmen who were installing, repairing and removing asbestos-containing products.”⁴⁸⁰ In addition, Mr. Golini stated that he had worked on LST (Landing Ship/Tank) ships, and on the USS Intrepid.⁴⁸¹

Mr. Golini identified Garlock gaskets and packing at his deposition,⁴⁸² as well as numerous other asbestos-containing products and manufacturers. He testified that he had to cut asbestos blankets on turbines, which created dust, and that he was exposed to dust from furnace cement.⁴⁸³ He also testified that he had to remove pipe covering to get at gaskets and valves, which created dust, and sometimes had to cut around insulation.⁴⁸⁴ While he testified that the pipe covering on ships was not dusty or flaky, he also testified that when he cut through the pipe covering it created dust.⁴⁸⁵ He also testified that, when he worked as a helper, he would walk around and sweep in a cloud of dust while workers were grinding wheels.⁴⁸⁶

As noted in the discussion of Mr. Brennan’s case, under Pennsylvania law at the time Garlock settled the Brennan case, a defendant could introduce evidence of exposure to other products in support of a “low dose” causation defense.⁴⁸⁷ However, only named defendants

⁴⁷⁸ See ACC-6036 (Email from John Turlik to Benjamin Shein dated January 30, 2010) at GST-EST-0337718.

⁴⁷⁹ See GST-2847 (Answers to Interrogatories, dated July 29, 2009) at GST-EST-0517915.

⁴⁸⁰ See GST-2847 (Answers to Interrogatories, dated July 29, 2009) at GST-EST-0517915.

⁴⁸¹ *Id.* at GST-EST-0517916/

⁴⁸² See GST-2844 (Golini Dep. Aug. 10, 2009 (a.m.)) at 79:6-12, 87:18-22.

⁴⁸³ *Id.* at 93-99; GST-2840 (Golini Dep. Aug. 11, 2009) at 225:22-226:5.

⁴⁸⁴ GST-2842 (Golini Dep. Aug. 10, 2009 (p.m.)) at 31:12-32:14.

⁴⁸⁵ GST-2841 (Golini Dep. Aug. 12, 2009 (p.m.)) at 138:11-139:13.

⁴⁸⁶ GST-2839 (Golini Dep. Aug. 12, 2009 (a.m.)) at 358:20-359:7.

⁴⁸⁷ See Shein Dep. 183:3-184:22, Jan. 16, 2013. See also *Kemper Nat’l P&C Cos. v. Smith*, 615 A.2d 372, 379-80 (Pa. Super. Ct. 1992) (only named defendants could be placed on the verdict sheet and be apportioned liability); *Ball v. Johns-Manville Corp.*, 625 A.2d 650, 659-61 (Pa. Super. Ct. 1993), *abrogated on other grounds*, *Baker v. ACandS*, 755 A.2d 664, 660 (Pa. 2000) (*Footnote continued on next page.*)

could be apportioned a share of the verdict. Bankrupt entities and their successor trusts could not be joined, and therefore could not be allocated responsibility. Thus, identifying bankrupt manufacturers of asbestos products to which Mr. Golini was exposed would not have affected Garlock's trial risk. In any event, as shown below, Garlock was able to identify bankrupts from documents already in its possession.

After settling Mr. Brennan's claim against Garlock, his attorneys filed several trust claims on his behalf, which were accompanied by affidavits by Mr. Golini identifying products for which those trusts are responsible. Mr. Golini had not identified those products to Garlock during his deposition, which took place after the affidavits were executed. Mr. Turlik testified at the Estimation Hearing that having the affidavits would have been important to Garlock's low-dose and fiber-type defenses,⁴⁸⁸ and that if Garlock had obtained that exposure information, it would have saved defense costs "because we wouldn't have to spend all that money trying to find alternative sources for this identification,"⁴⁸⁹ and would have lessened Garlock's trial risk because Garlock "would have had these exposures that we didn't know about at the time we settled the case."⁴⁹⁰ Yet there is no evidence that Garlock actually expended any costs trying to figure out alternate exposures. Moreover, the evidence shows that Garlock already had information about Mr. Golini's alternate exposures in its files.

In connection with the Flynn case, Garlock had already obtained voluminous certified ship records related to the USS Intrepid, one of the vessels Mr. Golini worked on, as well as expert reports regarding the machinery and equipment on that ship.⁴⁹¹ (Garlock did not produce that report to the Committee in this proceeding, but it was produced by Belluck & Fox, Mr. Flynn's attorneys.) The report identifies, *inter alia*, Babcock & Wilcox boilers and Worthington (DII (Halliburton)) pumps, and notes that Garlock has been provided another report on Essex-class ships that details the insulation products on the USS Intrepid.⁴⁹² Garlock did not produce its expert's machinery report on the Essex-class ships, despite having stipulated that it would provide the Committee with "any documents produced to the Debtors or obtained by the Debtors

(Footnote continued from previous page.)

(bankrupt entities could not be placed on the verdict sheet because any apportionment of liability to them was precluded by the automatic stay provisions of the Bankruptcy Code). Even under the Fair Share Act, which applies to cases involving claims that accrued after June 28, 2011, only non-parties that have *settled* with the plaintiff can be apportioned liability "upon appropriate requests and proofs." 42 PA. CONS. STAT. ANN. § 7102(a.2) (West 2013). Non-parties that have not yet settled cannot be apportioned liability.

⁴⁸⁸ See Hr'g Tr. 2286:16-17, July 31, 2013 (Turlik).

⁴⁸⁹ *Id.* at 2287:2-4.

⁴⁹⁰ *Id.* at 2286:22-24.

⁴⁹¹ See, e.g., ACC-6020 (USS Intrepid Historical Research Report Vol. 1); ACC-6021 (USS Intrepid Historical Research Report Vol. 2); ACC-7355-7590 (Flynn Ship Records).

⁴⁹² ACC-6020 at 2-3.

from any other source concerning the claimant's or injured person's exposures to asbestos-containing products or the identification of any products involved in such exposures.”⁴⁹³

The circumstances under which Mr. Golini's affidavits were prepared are unexplained. No witness with personal knowledge of them has testified in this proceeding. Mr. Shein, the 30(b)(6) witness for the Shein firm, testified that he first learned of the affidavits the night before his deposition.⁴⁹⁴ When questioned about one of the affidavits, Mr. Shein testified that his understanding was that the “affidavit was prepared based on the information we had specific to the Golini case, as well as information gathered based on our knowledge and experience of Babcock & Wilcox's presence at the Philadelphia Naval Shipyard.”⁴⁹⁵ He also testified that any failure to disclose exposures about which Mr. Golini had knowledge was a mistake: “[T]hat would have been an error on the part of my firm, and it should have been in [the interrogatory responses] if there was knowledge by him of that exposure.”⁴⁹⁶ Mr. Shein also pointed out that Garlock had been a defendant in cases involving the Philadelphia Naval Shipyard for twenty years before the Golini case, and knew the asbestos products that were present at that site: “[T]his information was known and available to all defendants in this case, including Garlock, given the course of discovery over the 20 years prior to this at the Philadelphia Naval Shipyard.”⁴⁹⁷

⁴⁹³ Stipulation and Order Resolving Motion of the Official Committee of Asbestos Personal Injury Claimants to Determine Insufficiency of the Debtors' Answers to the Committee's First Requests for Admission and to Compel Debtors to Respond to Certain Discovery Requests ¶ 5.f., filed Aug. 1, 2012 [Dkt. No. 2415].

⁴⁹⁴ Shein Dep. 63:17-19, Jan. 16, 2013.

⁴⁹⁵ *Id.* at 50:14-19.

⁴⁹⁶ *Id.* at 58:20-23.

⁴⁹⁷ *See, e.g., id.* at 79:22-80:1.